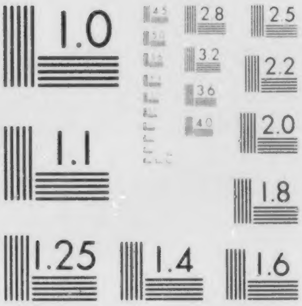
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MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

SEX AND VIOLENCE ON TV

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

THE ISSUE OF TELEVISED VIOLENCE AND OBSCENITY

JULY 9; AUGUST 17 AND 18, 1976

Serial No. 94–140

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SEX AND VIOLENCE ON TV

FRIDAY, JULY 9, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Denver, Colo.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 269, U.S. Post Office Building, Hon. Lionel Van Deerlin, chairman, presiding.

Mr. VAN DEERLIN. The hearing of the Subcommittee on Communications will come to order. Today we are going to hear from 14 people expressing a wide variety of views on the issue of televised violence and obscenity.

This is, of course, a highly controversial issue and an appropriate one for discussion in a forum such as this one. Later today, when we hear from broadcasters, some of them are likely to raise the spectre of Government control and censorship. Today's hearing, let me assure them and everyone, marks no step in that direction on the part of the Congress. As your elected representatives, we have a duty to listen and discuss openly and freely those things that are of concern to all of us. We have a responsibility to open a dialog, to examine and analyze alternative approaches to problems that confront us.

At the same time, however, I believe we all realize there is no question, and I hope absolutely no chance of Government censorship or control of broadcasting. That determination is well-spelled out in the Communications Act itself, under which we operate. I make this point not as a Member of Congress, but as a former newspaperman and broadcast reporter.

Because of our greater awareness, as Americans, and because we are generally better educated and better informed as a nation, the question of Government censorship and control of the media is probably further away now than at any time in the history of the United States. I am sure we have all found that highly satisfactory as we celebrate our 200th birthday. But we should all reflect from time to time that our freedom brings with it great responsibility. Today's hearing is designed to discuss some of these responsibilities. It is also designed to inform and educate us on what is an extensive and serious issue.

Before we hear from our opening witnesses, my colleague, Mr. Wirth, will outline the events leading to today's hearing and offer such views as he may care to state at this time.

Mr. WIRTH. Thank you, Mr. Chairman.

Every year, 10,000 Americans are killed by handguns. That's a shocking fact, but let us consider another; by the time the average 18-year-old American has graduated from high school, he or she has viewed 15,000 hours of television, has witnessed 18,000 murders, and countless incidents of robbery, arson, bombing, forgery, beating, and smuggling.

Although most parents are aware of the enormous amount of violence on television, I doubt whether they are familiar with the actual numbers. According to the annual violence profile compiled by the Annenberg School of Communications at the University of Pennsylvania, there are more than 7 acts of violence per hour between 9 and 11 p.m. every evening, nearly 4 per hour during the so-called family viewing period when, incidentally, there are supposed to be none, and over 16 per hour during Saturday morning children's programs.

The problem with this steady exposure to violence is that millions of children cannot differentiate between real violence and televised violence.

Indeed, the problem has become so serious that the American Medical Association, hardly known for its radical views, has called televised violence a health threat. Just last week the AMA House of Delegates approved a resolution calling on all doctors to oppose TV programs containing violence "as well as products and services sponsoring such programs."

Before we hear testimony from our witnesses this morning, I'd like to place today's hearing in a historical context. It may surprise some of you to know that congressional interest in the subject of televised violence and obscenity goes back over 20 years. Senator Robert Hendrickson held the first hearings on the topic of juvenile delinquency and TV programing in 1954 when he was chairman of the Senate Subcommittee to Investigate Juvenile Delinquency. When Senator Estes Kefauver took over that subcommittee in 1955 he continued to hold hearings, but it was Senator Thomas Dodd who held the first really extensive hearings on the subject of violence on television in 1961 and 1962. Senator Dodd got the support of both President Kennedy and Robert Kennedy, who was then Attorney General. There was talk among the networks of reducing the level of violence and the Attorney General even promised to push for antitrust immunity if the three networks got together in an effort to reduce violence in their programing. President Kennedy was assassinated and Robert Kennedy resigned as Attorney General before any progress was made.

The late Congressman Torbert Macdonald, who chaired this subcommittee from January 1967, until April of this year, was deeply concerned about the potentially harmful effects of televised violence on the young. He was responsible for the establishment of the children's television task force at the Federal Communications Commission.

Senator John Pastore, chairman of the Senate Subcommittee on Communications, has also been active in this area and was instrumental in setting up the Surgeon General's advisory committee in 1969 to study the effect of televised violence on children.

This advisory committee was the subject of some controversy, however, since two of its members were employed by two of the three networks—CBS and NBC. There were also allegations that all three networks were able to reject certain prospective members that did not meet with their approval.

Nonetheless, when the committee reported in March 1972, it said that the causal relationship between televised violence and antisocial behavior is sufficient to warrant appropriate and immediate remedial action. The Surgeon General, Dr. Jesse Steinfield, said in testimony before Senator Pastore's subcommittee that the "time has come—no action in this social area is a form of action; it is acquiescence in the continuation of the present level of violence entering American homes."

By 1974 the problem of televised violence was worse than ever. According to the annual violence profile, TV violence reached a new high, and the Federal Communications Commission received 25,000 letters on the subject of violence and obscenity on television—up from 2,000 in 1972.

Both House and Senate Appropriations Committees stepped into the dispute in 1974 and directed the Federal Communications Commission, through its Chairman, Richard Wiley, to submit a report to Congress by year's end outlining specific positive actions taken and planned with regard to the problem of obscenity and violence on television. As a result of this instruction, FCC Chairman Wiley initiated a series of meetings with the presidents of the networks and other senior network officials and the National Association of Broadcasters.

The meetings between the FCC, the networks, and the National Association of Broadcasters, continued throughout the fall and early the next year the so-called family viewing policy was born.

This controversial policy, adopted by the NAB in the spring of 1975, and introduced in the fall, stipulates that the first hour of network prime-time programing—the hour from 8 p.m. to 9 p.m. in the East, but between 7 and 8 p.m. here in Denver, be suitable for family viewing. On occasions when a program with violent material is broadcast in the first hour of prime-time, warnings are to be given. In other prime-time viewing hours, warning announcements are made before programs which might be disturbing to a significant portion of the audience.

These guidelines are thought by some to be unduly vague, and other critics have claimed that the family viewing period was an unnecessary public relations ploy since the NAB code already contained language condemning excessive violence and all obscenity in TV programs.

There was even disagreement about family viewing on Capitol Hill: While Senator Pastore applauded it as "A responsible answer to the problem of televised violence," Congressman Macdonald described it as "a publicity gimmick," and felt that it would be used as an excuse to increase violence after 9 p.m.

One problem I see with family viewing is the time zone difficulty—9 p.m. in New York and Washington, D.C. is 8 p.m. in Denver and Chicago, so adult programs are being watched by millions of children in the Midwest and the West.

There are other critics of family viewing of course. The Hollywood Program Production Industry's writers and producers have brought a suit against the FCC, the networks, and the NAB, claiming the policy violates their first amendment rights.

So the controversy over violence and obscenity rages on.

The violence index did not come down after the first season of family viewing. In fact, violence in children's programs showed a sharp increase over 1974, while violence overall remained at the 1974 level.

This brings us to today's hearing. We want to hear the views of the people in Colorado—the researchers, the public interest groups, the TV critics, and the broadcasters themselves. This is a problem that affects all of us, and it is my hope that we can work together to find solutions.

Quite frankly, this is a very thorny problem. On one hand, I believe that self-regulation—so far—has failed to work effectively, but on the other I am loath to advocate governmental regulation. The Constitution and the Communications Act of 1934 are very clear on the subject of Government censorship. While this is a very difficult subject, it's also a very serious one, and that is why I hope the testimony we hear today will yield some alternative courses of action.

Thank you, Mr. Chairman.

Mr. VAN DEERLIN. Without objection, the Chair wishes to place in the record, as though read, a statement submitted by Congressman Frank Annunzio of Illinois.

STATEMENT OF HON. FRANK ANNUNZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ANNUNZIO. Mr. Chairman, during this subcommittee's hearings on the effects of violence in TV programing, I would like to bring the attention of the members of the subcommittee to another related matter, and I appreciate this opportunity to testify. I have introduced a bill, House Concurrent Resolution 6, which would put the U.S. Congress on record in opposition to films and television or radio broadcasts which defame, stereotype, demean or degrade ethnic, racial, and religious groups.

Denigrating remarks about any group in society concerning characteristics over which they have no control, such as race and ethnicity, and those which are associated with the very beginning and ending of life, such as religion, are immoral in themselves. But, in addition, and this is the special concern of Congress, they strike at the heart of a healthy and wholesome political system. While the immorality of such expressions concerns each of us personally, this resolution recognizes that the vitality of our political institutions and values is dependent on harmonious relations among various ethnic groups. From the mutual respect accorded these groups will grow a stronger and more dynamic democracy.

The motion picture, radio, and television industries have been deficient in their responsibility to help create a society in which individuals can respect their heritage and its institutions, and I call upon the Congress to take a stand against such abuse.

The members of our minority and ethnic groups should not have to witness their portrayal as criminals, idiots or other undesirable characters. Each minority group is justifiably proud of its ancestry, its accomplishments, and its contributions to American society. When this self-pride is threatened, we jeopardize the human qualities which have most contributed to America's greatness.

Stereotypes as presented on television can be particularly influential to the young child. To a great degree, we become what we see, whether in life or in the media. Thus the challenge to the media is very great indeed, since modeling implies that children will be influenced not only by being told what they should be like but by observing what people with whom they can identify are actually like or portrayed as being.

When the media allow—and encourage—aspersions to be cast upon groups portraying them as "superstitious" Catholics, "dumb Polacks," or part of the "yellow peril," or as "welfare blacks," or as "Italian criminals," or as the "lazy bandito," or the "racist hardhat," or the "Jewish loanshark," then social harmony becomes a political concern. The denigrated groups become defensive and hostile to other groups and to institutions which appear to be controlled by "others." Such groups cannot help but question the worth of their allegiance to a political system which seems to affirm attacks upon them.

The motion picture and broadcast media are central to the American way of life and have a profound effect upon viewing families. In 1970, 95.5 percent of all households had television sets, and the average American watched between 25 and 40 hours of television a week. Thus the television set is a perfect instrument for those who would spawn prejudice against and prejudgment of our fellow man.

In such a situation, democracy and representative government don't have a chance. Insulted groups harden hearts and minds to others and freedom of speech becomes a monolog rather than a dialog. Supporters of this resolution do not want Government censorship; they want the leaders in the electronic media industry to exercise a social conscience in human relationships just as they want industries to exercise a social conscience in matters of employment, pollution abatement, and pricing policies.

When private industry defaulted in their social responsibilities they were subjected to Government regulation. My resolution calls for an evaluation and an accounting by the media industry a year after congressional passage to determine the adequacy of the code of ethics or the guidelines which they develop and apply under the legislation.

If I might, I should like to quote a statement of mine in the 1971 hearings on a similar resolution:

> Polish-Americans, Greek-Americans, Italian-Americans, Mexican-Americans, black-Americans, and members of every other minority and ethnic group, who by their vigor and pride have contributed so much to America's strength and greatness—have every right to be free from the harm directed at them by thoughtless panderers of hatred and discord. Every minority group is justifiably proud of its ancestry, its accomplishments, and its contributions to the advancement of world civilization. When we destroy this pride in "self"—we destroy the very quality Americans possess that has made America great.

Mr. Chairman, again, thank you for this opportunity to testify. I urge the members of this subcommittee to join with me in support of House Concurrent Resolution 6.

Mr. VAN DEERLIN. Is Dr. Harold Mendelsohn present? If not, we will proceed with the second witness on the list, Dr. Dane Prugh.

We are very grateful, Dr. Prugh, for your being with us, and you may proceed.

STATEMENT OF DANE G. PRUGH, M.D., PROFESSOR OF PSYCHIATRY AND PEDIATRICS, UNIVERSITY OF COLORADO MEDICAL SCHOOL

Dr. PRUGH. Thank you, Congressman.

It is my responsibility today to offer testimony regarding the impact of sex and violence in television programs upon children and adolescents. I speak for a large group, considering the fact that, by 1980, half of our population will be under 20 years of age. A good deal of research in recent years has been carried out on the effects of televised violence upon this age group. I am not aware of any significant amount of research dealing with the effects of the depiction of sexual episodes on television. Thus most of what I offer deals with violence; however, sex is often linked with violence on TV, and there is some evidence to suggest that children's attitudes, values, and beliefs are influenced by exposure to significant amounts of television. With regard to exposure, I should mention that, in 1961, it was estimated that, from age 3 through 16, the average American child spent about one-sixth of his waking hours watching television—more time than he spent in school.

As for the impact of violence, considerable evidence exists. Others will testify in detail about the amount of violence depicted on TV; I am aware that a study in 1973 indicated that violence occurred in 73 percent of total programing and in almost all cartoons. It is pertinent that, although children's programs are presented and contain much violence, by one estimate—children in the first grade spend approximately 40 percent of viewing time on "adult" programs, with this figure rising to 80 percent by the sixth grade.

The preponderance of evidence from available studies by competent behavioral scientists is that observing TV violence renders children more aggressive in their play, more willing to harm others, and more likely to select aggression as a preferred response in situations involving ambiguity or conflict. The cumulative effects of television violence are less fully understood. However, one short term followup study has indicated that the correlation between viewing television violence and aggressive behavior in children was greater after 1 year than at the time of the initial study. The only long term followup study of which I am aware showed a positive and significant relationship between the viewing of television violence by children in the third grade and aggressive behavior 10 years later. Finally, a recent study indicated that 50 third grade boys and girls may become apathetic to real-life violence after viewing television violence.

Most of the studies mentioned have dealt with groups of children and adolescents. Less is known about how violence affects individual children. Boys seem to show the effects of televised violence in physically aggressive behavior, while girls show equally strong reactions in less overt ways, as in tension, restlessness, or verbal expression. Younger children are more affected than older children, and more aggressive children are more vulnerable to influence.

It must be said that televised violence in itself has not been shown to cause crime or juvenile delinquency. Children who become addicts of TV are usually those who show problems in adjustment. Occasionally, the form or content of a delinquent act may be influenced by something seen on television by a disturbed young person with the potential for delinquency. Also, total censorship of violence is not the answer in a democracy. Some violence is part of human experience; to some extent, television's programing probably reflects the violence which is alarmingly part of life in America today. The question is rather whether children's needs are to be subordinated to commercial needs.

What specifically should be done? For one thing, parents need to become aware of the influence of television, particularly in regard to the impact of violence, though in other ways as well. One group of concerned parents and professionals has suggested that, for a child up to 5 or 6 years of age, 1 hour of television viewing a day is the maximum he or she can spend before showing signs of overstimulation, depletion, and exhaustion. Some parents need help in setting limits on TV viewing, as with other activities, and family viewing, followed by discussion and interpretation of programs, can be of value. A "Family Guide to Children's Television" by Evelyn Kaye is an excellent source of information. The present TV fare offers limited choices, however.

In a more fundamental approach to the problem, efforts to move the television industry toward upgrading the quality of programing have been undertaken by Action for Children's Television (ACT), a nationwide citizens' organization. Studies of viewing responses to such programs as "Mr. Rogers' Neighborhood" have shown post-viewing cooperativeness, friendliness, and less overt aggression. Although most so-called children's programs are not really designed with children's needs in mind, programs of this type point the way toward the richness and variety of potential television contributions for children.

The 1970 White House Conference on Children recommended that a multidisciplinary federally funded agency be set up to research, create, and supervise television programs of a positive nature for children. Although I am not certain that would be the ideal answer, certainly efforts by concerned citizens and professionals to attack the problem at its source are urgently needed. I will stop at that.

Mr. **Van Deerlin**. Thank you, Dr. Prugh.

What can you tell us about the report that came out of the American Medical Association convention just a couple of weeks ago on this subject?

Dr. **Prugh**. Congressman, I don't belong to the American Medical Association and I'm afraid I'm not aware of that report. I will become aware of it in the next few days. I haven't read about it in the newspapers. I know they are concerned about this particular problem and related problems. I am glad to see the AMA is finally concerned.

Mr. **Wirth**. In an AP release out of Dallas, the American Medical Association House of Delegates yesterday, dated July 1, approved a resolution encouraging all physicians to oppose TV programs containing violence as well as products and services sponsoring the programs. The resolution, a milder version of the original proposal, said that television violence is a risk factor threatening the health and welfare of young Americans, indeed our future society. The original resolution called on doctors, their families, and their patients to boycott the products of any company that sponsored a television program concerning violence.

Dr. **Prugh**. I am glad to hear that.

Mr. **Van Deerlin.** You indicate that 1 hour of television viewing for most young children would be about the attention span that could be absorbed without undue stress or nervousness quite apart from any violence depicted?

Dr. **Prugh.** Yes, that's without the question of violence. That's a figure that a number of professionals and concerned parents have arrived at. With my own experience as a professional, I would agree with that statement. One hour is long enough.

Mr. **Van Deerlin.** How does that compare with the average daily viewing of most children?

Dr. **Prugh.** Well, I cited the one instance which was made in 1961, kids from 3 through 16 spent about one-sixth of their time, their waking hours in front of a television set, so this would be considerably larger than 1 hour. Kids 3 to 6.

Mr. **Van Deerlin.** It could be in excess of four hours?

Dr. **Prugh.** Yes, it would be. Well, it depends on what their waking time is, but 6 or 8 hours probably.

Mr. **Van Deerlin.** We might wish for some more recent estimates and statistics. 1961, I suppose——

Dr. **Prugh.** Yes, I think there may be some. It may have been that was a little bit earlier, but I still think that preschool children spend several hours a day watching television and this is too much.

Mr. **Van Deerlin.** What have you noted in television advertising aimed at children? Have there been some improvements there since the organizations brought pressure to bear?

Dr. **Prugh.** I know the pressure has been brought to bear and I can only cite my personal experience. I haven't reviewed the literature in that area, but there is a little light. I'm not aware that it has been a strong impact on the advertising as yet, but that's largely a personal responsibility. I would hope some impact has been made by these people.

Mr. **Van Deerlin.** I believe that the concern of the Association on Children's Television was directed not only at the volume of advertising, but the subject matter—at the idea of drugs, for example, for adult use being advertised during time when clearly children were watching.

Dr. **Prugh.** That's right and the study, another review, not mine, in 1974, would indicate that much of the health-related information in programs and advertisements is devoted to misleading and inaccurate advertising, but that study found that 70 percent of fifth and sixth grade children seem to believe the truth of these messages. That was 1974 so any changes, if it had occurred, would be rather recent. I don't believe the situation has strongly changed today in spite of some very sincere efforts by very concerned and able people.

Mr. **Wirth.** I would just like to note the recent statement by the American Medical Association in their journal on December 19, 1975. There is a clear article by Michael Rothenberg concerning the effect of television violence on children and youth, and at the end of the article Dr. Rothenberg states:

> It would seem to me that the time has long passed when there should be an organized cry of protest from the medical profession in relation to what is a national scandal. Such an outcry should be accompanied by specific recommendations based on sound children development principles and the hard data are already available to use from 25 years of investigation of the relationship of television violence and aggressive behavior in children and youth.

That would seem to be very concise and would agree with the summary of your statement.

Dr. **Prugh.** I would agree with that although I wasn't aware of that study. I do know Dr. Rothenberg and I do read the Journal of the American Medical Association, but I haven't read that particular issue. There is a recent summary in the Journal of Pediatrics of the American Academy of Pediatricians by Richard Klinebloom of Harvard, which also echoes much the same approach.

Mr. **Wirth.** I guess you know the first thing that we wanted to focus in on with you and Dr. Mendelsohn in particular was again the casualty here. Can we tie down that relationship between violence on television and aggressiveness in the behavior of children? Could you summarize your experience on that front?

Dr. **Prugh.** Well, in my statement I put in rather strong terms, but I have also seen that there are a number of factors involved, and it is hard to come up with the feeling that televised violence is the only cause of aggression, but I am satisfied from the studies available at the level of competence of those investigators that there is an impact, a negative impact of violence on television on children and it doesn't cause crime perhaps but it causes aggressive tensions, more aggressive behavior, less concern for other people and I can't see but that doesn't have an effect upon kids oftentimes. It affects their personality problems, in an aggressive way.

Mr. **Wirth.** We clearly have a different kind of responsibility. Traditionally, in the institutions for the development of children were the family, church, school and there are many others I am sure, but those are the dominant ones in our culture. Suddenly in the last 25 years we have been faced with a whole new mechanism and as you pointed out and as the chairman pointed out in his opening remarks, we are in a real dilemma on the basis of the first amendment. On the other hand, there are the concerns of society about those institutions, the responsibility of Congress over the airwaves and the relationship of the electronics media to those as an institution for child development.

Dr. **Prugh.** You posed the dilemma very clearly, and the best I can say is that I am afraid most parents don't realize the impact of violence on their own children. They are not aware of the studies in medical and other professional journals. There have been very few discussions of this in literature available to the general public that I am aware of. I have the feeling that if parents became aware of these things and this kind of impact, they would be much more concerned and they would exercise more limits on the position of the family and try to protect their children from being bombarded with such a large amount of violence.

I think possibly, this is pure speculation, that adults themselves in our society apparently are so bombarded with violence, that they tend to become apathetic to the amount and aren't quite aware of the situation. The adults can tune themselves out. The adults have a method of tuning it out because of their greater maturity and other psychological characteristics, which are not available to young children. The impact is much more direct on the young children who don't have the method of tuning out or censoring unless he is much older.

Mr. **Van Deerlin.** A recent Neilson report showed that children ages 2 to 12 watch between 2 and 25 hours of television a week, which would come out very close to the 4 hours.

Mr. **Wirth.** In summary, Dr. Prugh, you as an expert and professional in the field of child development, are convinced that there is a real problem of violence on television and its relationship to children and their development.

Dr. **Prugh.** I am totally convinced of that, Congressman.

Mr. **Wirth.** And you are convinced from your summary statement that some method should be found to more clearly illustrate this to the parents as to what's going on?

Dr. **Prugh.** I do indeed. Perhaps the publicity around this committee's hearing could serve to that effect.

Mr. **Wirth.** Can you think of other ways this might be done?

Dr. **Prugh.** Well, certainly articles in popular magazines and newspapers would be supportive. There are a number of ways to reach the public. I don't know why it hasn't been done, but perhaps this hearing will do—move that along.

Mr. **Van Deerlin.** Thank you very much.

Could we hear from Dr. Mendelsohn, please?

STATEMENT OF HAROLD MENDELSOHN, Ph. D., DEPARTMENT OF MASS COMMUNICATIONS, UNIVERSITY OF DENVER

Mr. **Mendelsohn.** Sorry I was delayed. The parking problem around this area is almost violent.

Mr. **Van Deerlin.** You may proceed with your statement, Dr. Mendelsohn.

Mr. **Mendelsohn.** I will confine my remarks to the matter of violence and television. Since most "sex" on TV these days seems to revolve about the alleged misadventures of Members of Congress as reported in the news, it hardly seems appropriate to give serious attention to allegations regarding the possible effects of fictionalized sex as portrayed on TV. Here we seem to have a clear-cut case of life-outdoing art.

Mr. **Van Deerlin.** I am going to insist on equal time here.

Mr. **Mendelsohn.** The question of whether portrayals of violence on television unduly affect audiences in a negative fashion can be approached from either of two broad perspectives. The most common perspective—the one which has had considerable popularity among critics of the mass media ranging from Plato who would banish the poets from his Republic to Richard Nixon who would do the same with the Washington Post—treats man as weak and the media as all-powerful. For the sake of brevity we shall refer to this as the behavioristic perspective.

The less popular though empirically far more promising perspective turns the behavoristic proposition around viewing man as all-powerful and the media as being relatively weak. Again, for brevity's sake we shall refer to this as the functionalistic perspective.

The behavioristic perspective equates exposure with effect and seeks an answer to the question, "What do the media do to audiences?" In contrast, the functionalists consider exposure a necessary but not sufficient condition for effects to take place, and they search for an answer to the question, "For what reasons and to satisfy which needs do audiences use the media?" Thus, behaviorists show concern that exposure to violent portrayals on television may cause audiences to become violent—a concern that simply is not borne out in general terms by any acceptable empirical evidence whatever. Functionalists, on the other hand, are far more interested in finding out why audiences seem to enjoy televised portrayals of violence—is it because they live in environments where violence is an actual part of every day life; or is it because they live dull existences that are throughly devoid of excitement; or is it because they find viewing violent portrayals helps them to cope with their own personal frustrations; or what?

In its simplest form, the behavioristic model as it has been applied to mass communications research has been little more than an extension of the most naive Pavlovian stimulus-response dynamic. Old-line mass communications behaviorists, generally unmindful, of modern gestaltist psychological thought, have been plying their threadbare mass communications wares to unsuspecting publics who are turning more and more to unitary deterministic theories for guidance to the confounding perplexities of modern life: If you want to put an end to sex crimes, do away with pornography and obscenity in films; if you want to curb demonstrations in the streets, ban portrayals of violence on television: if you want to defend an incompetent or manifestly corrupt president, blame the press for conspiring against him and pressure reporters and newscasters to report only "the good news" about the Chief Executive and his administration.

No matter what guise they may take on, the major policy implications derived from behavioristic mass communication's research invariably converge at one ultimate point—censorship. Because censorship is so critical as an issue in a democracy, the policy recommendations emanating from the behavioristic school can by no means be taken lightly. To avoid any possible misunderstanding, I am not denying that the media presently are subjected to all kinds of censorship at the hands of producers, editors, advertisers, publishers, trade codes, boards of censors, and the like. Neither am I proposing that criticism of the media is unwarranted or that it should be stopped. To the contrary, I endorse lively normative criticism of the media on philosophical, aesthetic, moral, and any other humanistic grounds. What concerns me is the increasing trend toward the utilization of social science research as a rationale for criticisms of the media, giving such criticisms and the policy recommendations accompanying them an aura of scientific validity and legitimacy they never before had.

The nature of the evidence offered by behavioristic mass communications research becomes critical in examining its claim to legitimacy in the formulation of mass communications policy. First, it is derived basically from artificial laboratory experiments. Often lacking both adequate controls and adequate samples, these laboratory experiments generally contrive to stimulate mass communications situations in which one factor, and only one factor—exposure—is manipulated. The determination to isolate just one experimental factor for investigation at precisely the time when various multifactorial designs, manipulations, and analyses are readily available in the social sciences is an interesting curiosity in itself.

Second, behavioristic mass communications research is solely dependent on the assumption that content can be equated with stimulus. That is to say, behaviorists conducting research on mass communications confound the fundamental principle of learning: before a sign can be learned it must first be transformed into a stimulus by the recipient. To put it another way, what the communicator puts into a message is not necessarily what the recipient ultimately gets out of it. Still, the literature is replete with examples of battered-head and bloodied-nose counts, solemnly offered as evidence of "violence" in the media. Most often, neither verbalized nor nonverbalized conspiracies, threats, and insults are counted or accounted for in these analyses, because such incidents fall out of the rubric of so-called overt expressions of aggressive behavior.

It might be added that content analyses of so-called violence are customarily reported in absolute terms, rather than as proportions of totalities that include neutral and nonviolent signs as well. It is not surprising to find much violence in television content when that is all that is being sought. It is not a matter of hyperbole, then, to expect behavioristic-oriented content analysts, for example, to codify scenes of Adolph Hitler doing his famous little jig beside the French surrender railroad car at Compeigne as nonviolent media content, or perhaps even as a manifestation of prosocial behavior. Hitler as a patron of the performing arts. At the same time, it would not be farfetched for the same content analysts to codify a scene depicting a freckle-faced young scholar sticking out his tongue behind his teacher's back as an "overt expression of aggressive behavior."

In essence, all content analysis—whether formal or informal, qualitative or quantitative—must be normative. Without accompanying data on how the signs reported in these content analyses are transformed into actual stimuli by audiences, analyses of content alone have the same value for media policy formation as do any other speculative data. This fact notwithstanding, the mass media are constantly subjected to pressures to censor themselves or to be censored solely on the basis of the number of expletives uttered, the kind and amount of anatomy exposed, the number of physical blows struck, or the number of remarks ranging from favorable to unfavorable made about a Presidential candidate or a minority group.

The third perplexity stemming from behavioristic research in mass communications focuses on the problem of extrapolating experimental data derived from highly selected miniscule samples first to large populations and then to society as a whole. Ever since Carl Holland's attempt to reconcile differences between results derived from laboratory experiments with those derived from field studies, it has become customary to explain away such differences as mere consequences of variations in research design and research methods.[1]

In essence, it is tautological to attempt to explain why laboratory-derived effects data cannot be generalized on the basis of how the data are gathered. We know that such differences are indeed due in part to differences in method. But, perhaps more importantly, they are fundamentally due to differences in the basic images of man and the media which dictate choice of method in the first instance. In normative terms, behavioristic experimentation in mass communications research necessarily begins with a dysfunctional image of man as peculiarly susceptible to powerful mass mediated signs. This precept is bound to contaminate everything that flows from it.

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[1] Carl Hovland, "Reconciling Conflicting Results Derived from Experimental and Survey Studies of Attitude Change," "The American Psychologist." Vol. 14, No. 1.

Two additional factors enter into the failure of experimental data as candidates for extrapolation. The one is inherent in the way typical behavioristic experiments in mass communications research are set up. Here, Ernest Nagel's "law of the hammer" seems to apply most appropriately. Nagel's law posits the simple thesis that when an individual is given a hammer to hold, he will sooner or later strike something with it. Often behavioristic mass communications experimenters not only provide the hammer, but, for good measure, also conscientiously scatter about the nails and boards as well. Albert Bandura's much publicized "Bobo-doll" experiment is just one outstanding case in point.[2]

The other factor serving to constrain extrapolation relates to the subjects—subjects on whom experiments on mass communications research are most frequently conducted. Hovland and his Yale colleagues early noted that mass-mediated messages are most effective in influencing the brightest, the most aware, the most interested, the most openminded, and the most highly motivated subjects of given audiences. This finding has been confirmed in a variety of studies conducted both in the laboratory and in the field over the past several decades.

Experiments on the alleged effects of mediated communications conducted solely on subjects who are college students or the children of university professors are almost certain to manifest changes as a direct consequence of exposure. These population subsets are literally trained to react to abstractions and to be receptive to innovative ideas. But the population as a whole is made up of both sophisticates and provincials, professors and functional illiterates, those with flexible receptivity to ideas and those whose positions are literally immutable (even under the most intense bombardments of symbols inviting them to change).

The provincials, the functionally illiterate, and the immutable traditionalists rarely show up in the laboratory. Yet their distribution in the population far outweighs that of the types on which mass communications experiments are typically conducted. Their resistance to changes of any sort is monumental. Small wonder, then, that the effects noted in much of behavioristic mass communications, experimental research manifest themselves in naturo only on occasion, if at all.

For the functionalist, both exposure and effect are equally controlled by disposition and utility. Here, the image of man is one in which the human organism actively chooses from among the manifold signs that beckon to him. He avoids most of them, ignores many more of them, and transforms only minute members of them into stimuli in accordance with his own personal situation, background, experience, needs, wants, and expectations. In this process, the signs that first appear as overt content may or may not remain congruent with what was originally intended by the communicator or with what a third-party observer thinks he sees. For example, it is equally possible to conclude that a youngster viewing a scene of a sheriff shooting an outlaw will infer from it that "crime doesn't pay" as it is to suggest that he or she is being schooled in the notion "that violence is an acceptable mode for resolvingict confls."

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[2] A. Bandura, D. Ross, and S. A. Ross, "Imitation of Film-Mediated Aggressive Models," Journal of Abnormal and Social Psychology, Vol. 67, 1963, pp. 575–582.

One cannot help but wonder how the generation of young viewers who were supposedly weaned on television violence became so active a force in bringing a conclusion to our violent involvement in Viet Nam. The behavioristic paradigm would have us expect a contrary outcome.

From the perspective of behaviorism in mass communications research, policy recommendations consistently hide behind the veil of normatively proscribed "needs". For the humanist, primary needs are essentially aesthetic in nature; for the cleric, they are moral; for the educator, mainly cognitive.

In general, behavioristically inclined researchers seek to assess the effects of media from the perspective of what a priori they consider to be discrepancies between human deficiencies and what the media offer. Curiously, mass communications behaviorists rarely bother to find out the relevancy of what they, as observers, subjectively consider to be needs and what audiences themselves actually experience as such. Because audiences are viewed basically as automotion receptacles, incompetent to make meaningful judgments in their own behalf, it is recommended that external standards be set by various regulatory elitist bodies outside the domains of audiences. As previously stated, such external standards ultimately involve some form of media censorship. Rather than reflecting realistic needs of audiences, externally applied standards reflect the needs of the elitists who seek to impose them on individuals, communities, and society for various self-serving personal, ideological, or political reasons.

It is precisely because numerous publics with varied social and psychological attributes, interests, motivations, expectations, and tastes come away from the media with differing experiences that it would be unrealistic to formulate media policies from any given catalog of presumed audience needs are generally onesided, undemocratic, and insensitive to the real expectations and behaviors of media audiences.

In functionalism, various dispositions and uses are seen as producing varied effects. Thus, the uses to which individuals put the media and the gratifications they derive from them vary as do their dispositions, needs, wants, and expectations. Functionalists generally address themselves to the discrepancy between what audiences may actually expect or want and what the media actually deliver. This is by no means a simple task; perhaps, it ultimately defies the empirical research process. Yet, in practice, all policies regarding mass media content are promulgated on the premise of audience wants, expectations, uses and gratifications—a fact most disturbing to the behavoristic critics of the media.

Externally applied standards such as the "family hour" or violence rating scenes are based not on audiences' needs; but rather on the needs of the reformers promulgating them are bound to fail in controlling children's exposure to violent portrayals on television.

The family hour concept not only has raised serious questions regarding censorship. It has turned out to be nearly totally dysfunctional in raising the quality of TV fare during early prime time hours as well. It is inconceivable that the phoney rehearsed game shows; the tired staged animal exhibitions; and the 20-year-old reruns that make up a good part of the family hour today can be committing anything but violence on the sensibilities of television viewers in general. About the only functional attribute of the family hour to this date rests in its generation of exceptionally lucrative income to local television broadcasters who can purchase allegedly violence-free but nevertheless low quality, bargain basement fare to fill the time supposedly allotted to family viewing. What seems to be happening, is that viewers who are interested in watching exciting dramatic fate—often content that portrays some aspects of violence—simply have to wait an hour longer than previously in order to avail themselves of such programing.

So-called violence ratings also can run into censorship difficulties, for it is not too clear from the proposals submitted thus far precisely who representing whom will be responsible for making such ratings, nor what the criteria for judgment will be. Certainly there is considerable disagreement regarding exactly what constitutes violent portrayals.

I, for example, consider such manifestations as kicking, punching, smashing, and even stabbing or shooting as relatively less violent than the cold disapproving stares of unloving parents; or the cruel exclusion of someone from active social interchange; or the senseless planning of a war; or the crass embezzlement of public funds or the conspiracy to do so; or the calculated abuse of political, social, or economic power. Will the violence raters forewarn viewers of these dangers? Hardly.

If we ever adopt a violence rating scheme for TV, it will be counterproductive. We can be sure that viewers will most likely be attracted by the highest violence-rated programs, and as a consequence producers will strive to achieve high violence ratings in order to attract the largest possible audiences.

Realistically, Government per se cannot directly do very much about TV content without assuming the role of censor. And the risk of censorship far outweighs the alleged risks involved in viewers being exposed to violent portrayals.

Yet, there is no denying that television content is made up of a good deal of overt violence. If Government is interested in controlling excessive exposure to what it may consider to be excessive violence in television for reasons of aesthetics or morality, I would offer four explicit recommendations.

First, I would recommend that Congress wholeheartedly support the Corporation for Public Broadcasting and the Public Broadcasting Service with ample long-term funding to bring the best possible alternative programing to the viewing public.

Second, I would recommend that Congress allocate generous grants to universities to experiment on and to actually develop attractive, mass-appeal, high-quality, nonviolent programing prototypes for adaption by the television industry.

Third, I would recommend that Government encourage the teaching of mass communications in our elementary and secondary schools so that children can develop discernment and discrimination in their tastes for mass media fare. We teach children to acquire taste in the cultural areas of music, art, and literature. Why not in the mass media?

Fourth, I would recommend that Government encourage the education of parents vis-a-vis the roles of the mass media in the socialization of their children. Parents who are concerned about the possible harmful effects of televised portrayals of violence on their children need learn just two simple behaviors—the ability to say the word "no" and the ability to push the "off" button on their trusty television receivers.

Mr. VAN DEERLIN. Thank you very much, Doctor.

You are familiar, I suppose, with the work and findings of the Annenberg School of Communications at the University of Pennsylvania?

Mr. MENDELSOHN. Yes.

Mr. VAN DEERLIN. The rather sober findings there have divided the public into hard television viewers—that is people who watch television for up to 4 hours a day—and people who watch less than 2 hours. It's found that there is a traceable difference in the attitude toward life, and toward the world around them, of those who see a great deal of our daily television fare. The heavy viewers are far more likely to consider themselves unsafe when they go out on the street, and are far more likely to want burglar protection systems on their doors, far more likely to want and have a gun in the house. They apparently conceive the world around them a far more dangerous place to live than those who watch very little television. Could you comment on that line?

Mr. MENDELSOHN. Yes. The typical problem is what is cause and what is effect. It has been consistently demonstrated for example, that people who are very heavy viewers of television tend to be less well educated, lower income, and older from the person who watches very little television, who tend to be better educated, the younger and much more sophisticated in terms of life generally.

The criticism of that particular finding is that the Annenberg researchers tried to make a causal relationship between exposure and and certain attitudes toward life. We would argue that the relationship extends between certain attitudes toward life to begin with, and exposure.

Mr. VAN DEERLIN. Had they had no television at all, they would still be people who are the most nervous?

Mr. MENDELSOHN. Yes; they would be the same from the radio or magazines or from whatever, newspapers.

Mr. VAN DEERLIN. I thought perhaps you were a little unfair on page 8 of your statement, where you say,

> It is inconceivable that the phony rehearsed game shows; the tired staged animal exhibitions; and the 20-year-old re-runs that make up a good part of the family hour today—viewing concept.

Of course, a great deal of this goes back to the Commission's effort to open up more prime time for programing produced by other than the networks. This seems to have been a source of those low-budget game shows that take up so much early evening viewing?

Mr. MENDELSOHN. Well, I certainly would be in sympathy with the principle that it would be nice to have locally originating programs that would be beneficial to viewers. The plain fact of the matter is that local television programing is economically unfeasible in most markets in this country and that the best way out of it is to pick up packages that are available in the marketplace with dubious quality, generally not only in terms of nonviolence, and when I say phony game shows, what I mean by phony game shows, most of the participants in those particular programs have been rehearsed. As a matter of fact, most of the shows have a little legend that says so. The Les Blue column in the New York Times about 3 or 4 weeks ago, he said that we are beginning to develop a rather messy kind of situation with regard to whether viewers perceive many of these kinds of programs to be honest or not. Even though they are told they are quite dishonest. What we seem to be heading for is that it is perfectly okay to be dishonest if you say you are being so.

Mr. **Van Deerlin.** Some of this goes back to the phony quiz shows of the 1950's?

Mr. **Mendelsohn.** Right, but they never said they were dishonest.

Mr. **Wirth.** In your statement, you say, "behaviorists show concern that exposure to violent portrayals on television may cause audiences to become violent—" and you go on to say it is a concern that is not borne out in general terms by any acceptable empirical evidence whatsoever. I might quote again from the study from the Journal of the American Medical Association. Liebert did some of the research for the report and it was published in book form in 1973. They offer an opinion that a review of this entire subject points out that 146 published papers reporting on 50 studies and correlations, together with field studies and analyses, involving 10,000 children and adolescents from every conceivable background, and concluded that viewing of television violence has increased aggressive behavior in the young and that remedial action in terms of television programing is needed. That would seem to be a contradiction?

Mr. **Mendelsohn.** I certainly agree with Dr. Liebert's interpretation. As you will recall, I was a member of the Surgeon General's committee on television behavior and reviewed all of the material that had been produced and about the only finding we had was that Dr. Liebert is not quite accurate when he says that evidence indicates that all children or any child, without defining what a child is, what aggressive behavior is, what exposure is, the material to which he alludes indicates that at best there is a 0.3 correlation between some kind of exposure and some kind of aggressive behavior among some kinds of children under some kinds of circumstances.

Now, if Dr. Liebert wants to go ahead and say that there is absolutely evidence that means that every child who is ever exposed to violent behavior or is going to act aggressively, that certainly is his privilege. There is a considerable amount of debate regarding those findings, and there is a considerable dialog going on between the functional analysts and the behaviorists on that very score. There really is no solid empirical evidence which indicates a direct causal relationship between exposure to violence defined in many cases, and aggressive behavior among all children. Usually those children who have manifested some aggressive tendencies before exposure, or those children who have experienced some traumatic kinds of upbringing in either problem-oriented home environment—and certainly what are children, 3 years old, 7, 18 years old, 12 years old. Dr. Liebert is not very clear about specifically what he is talking about.

Mr. **Wirth**. In January 1972 you and 11 other distinguished social scientists and doctors signed the letter of transmittal to Dr. Steinfield, Surgeon General. In that letter, one of your conclusions was, "The majority of studies coupling various age levels share the conclusion that viewing violence increases the likelihood that some viewers will behave aggressively immediately or shortly thereafter." Have you changed your mind?

Mr. **Mendelsohn**. No, the key word is some viewers.

Mr. **Wirth**. What does your 0.3 correlation mean?

Mr. **Mendelsohn**. The weakest possible statistical correlation you can get, but it is the strongest correlation recorded in those series of studies.

Mr. **Wirth**. So your conclusions are really at odds with those of our first witness, Dr. Prugh and the AMA, and the evidence that was put together by Liebert and other people in the AMA?

Mr. **Mendelsohn**. Well, generally, these are not mass communication research people. I can make a lot of statements about relationships between the violence committed in a hospital on patients and the consequences of that, but without having any education I can't see how medical people really are qualified to make meaningful statements regarding this relationship without studying it quite empirically.

Mr. **Wirth**. I might quote again from Steinfield, who is a medical doctor, but who had the benefit of all the scientists and research which went into the Surgeon General's report when he testified in March of 1972 before the Senate Subcommittee on Communication.

> The data on social phenomena such as television and/or aggressive behavior will never be clearly enough defined for all social scientists. There comes a time, however, when the data are sufficient to justify action. That time has come and no action in this social area is a form of action, it is an acquiescence in the continuation of the level of violence entering American homes.

Mr. **Mendelsohn**. Sure, this is a political conclusion that Dr. Steinfield came to.

Mr. **Wirth**. I find it difficult to believe that the Surgeon General in the Nixon administration would make such a conclusion in the face of a lot of broadcast interests who would be concerned or interested in that, making such a statement, that doesn't——

Mr. **Mendelsohn**. I am saying that his conclusion is not based on scientific evidence. It was a misreading of the record and he is entitled to his own interpretation. I don't think you will find, Mr. Wirth, concensus among those people who are seriously concerned as empirical researchers of mass communication regarding so-called evidence. Political evidence may be OK for schools of psychiatry, but it is based on only observations of ill children. Experimental evidence is based on only experiments run with 20 or 30 kids and we know nothing about who these kids were, the kinds of lives they led and so forth. Some evidence indicates that among some children the exposure may be somewhat harmful. On the other hand, we have a tremendous amount of evidence for example, among many, many thousands of children that exposure to intercity schools is far more harmful to them. First, we tried to do something about schools. The report on the lives of children in New York City is absolutely shocking and here we are talking about school systems and not television. What do we do about that? There is a risk, there is harm.

We have a case in Colorado recently when a young man reading the Bible took a passage literally and gouged his own eyes out and chopped off his hand. Do we say the exposure to the Bible permits that kind of influence on everybody, do we do away with the Bible? We have to take a look at how that evidence was obtained and what its legitimacy was before we go off halfcocked, making a policy statement, which is what I said in my statement. I am very critical of television on many other levels. I cannot really be critical of television based on the data that I have reviewed, that I have studied on my own as a scientist. It is just not there.

Mr. VAN DEERLIN. While you don't think that much of this is edifying, you just aren't satisfied that it contributes to violence in our social behavior?

Mr. MENDELSOHN. That's right. Some of it is identified in terms of giving us information and much work is needed, but I would say that money would be totally wasted if we concentrated on television. What seems to be the problem in the American society today is that we know very little about how children become socialized into meaningful citizens in society and what the various experiences of that process are, how they act and how they contribute. Television seems to be a very minor kind of contributor. We are much more concerned with bad housing, bad education, broken homes, poverty, these have a greater impact on the children and this is the area wherein Congress must react.

Television may be a contributing factor, but the facts are not in, and certainly there is considerable debate on the priority of that particular risk.

Mr. WIRTH. Further, Dr. Mendelsohn, would you suggest further research ought to be done in this or is this a dead end route? Would you rather concentrate on the four recommendations of your testimony?

Mr. MENDELSOHN. Well, as a researcher, I recommend further research. That's the way we keep busy. I think further research is absolutely necessary, but in a much broader scope. What are the really harmful risks that children and our society run from a variety of institutions. The media may be one of them. I am not ready to say that there is absolutely no risk and what we need is more violence and so forth. I personally am opposed to violence, but I don't think we should be concentrating as a Nation in terms of our priorities on one particular problem or factor, because the evidence simply doesn't demonstrate that this is a high priority kind of consideration.

Mr. WIRTH. I would add to that when figures appear that the average child spends 11,000 hours in the classroom and 15,000 hours watching television, it has got to be significant in that child's life, just from the amount of time spent.

Mr. MENDELSOHN. Which, the classroom or the television?

Mr. WIRTH. Both.

Mr. MENDELSOHN. Yes; that makes a more meaningful approach. He also spends X numbers of hours with his mother and father. These days with either one. The problem of divorce, broken families, and so forth—you have the three components so why only concentrate on one?

Mr. **Wirth**. There is a tendency to concentrate on one such as the hearing today.

Mr. **Mendelsohn**. There are a variety of ways in which children are socialized and which are influences on their lives, families, church, and now the media, and we are learning that this is a very big influence and we have to understand a lot more about that and who is responsible for what. Then we get to the difficulties being talked about today, censorship and the first amendment which are very clear and very honest concerns and I agree with those.

Mr. **Van Deerlin**. The problem with housing and broken homes might carry a little beyond the authority of this Commission.

Mr. **Mendelsohn**. I understand that, but nevertheless, we can't put on blinders and say that it doesn't exist.

Mr. **Van Deerlin**. Thank you very much, Dr. Mendelsohn.

I understand that the Reverend Earl Hanna who is listed as the fourth witness has a scheduled program and would appreciate being the next witness and I trust that that will be agreeable with Ms. Hoback from the NOW organization. I will call Reverend Hanna.

STATEMENT OF REV. EARL K. HANNA, PASTOR, ARVADA UNITED METHODIST CHURCH

Reverend **Hanna**. We are dealing with communications and I have had some personal communication problems where we are today. This is off to a difficult start. I think the comments I would like to share, and I will try to be brief, and they may seem not exactly related to the issues of the subcommittee; but hear them in the context that these issues are related, although it may not be the direct point which you might wish.

I think that as I have listened to the two presentations this morning and in my own thinking, I think we always have the danger in this matter of treating what is apparent and missing some of the deeper issues.

If a person has a blemish on the skin, he may use an ointment to treat the blemish, but if it is in the blood then that is wrong. If that condition of the bloodstream is not given therapy the blemish will not disappear, and so, I think the thought I would carry here this morning would be in this direction of what is the bloodstream behind what they are talking about.

I have been interested in this Bicentennial year by thinking about the Declaration of Independence and the issues involved there. A great man of vision, George Mason, resisted the signing of the Declaration because of the slavery issue and at that particular time in approximately 1776, Ben Franklin said, "You know the issue right now is independence." That is what I was thinking about, what a price this Nation has paid for that independence, the Civil War, the civil rights, so very briefly before things that I would try to outline in my appearance this morning are that one is in television, and the mass media in all our society, we are talking about what this does to the children. But it seems to me that not only a subcommittee such as this, but our entire culture needs to take a serious look at the concept of double standards. I think there is an advance of basic integrity in that we as a society need to take a serious look at the idea of things are good for adults and wrong for children.

Now, I have been prepared to say that you can make that differential very quickly, a child comprehends certain things and an adult others. On the other hand, it seems to me that we need to take a serious look at the logic of how society is conditioned for example, in mathematics. Two plus two to us is four, and to the elementary student, but in higher, more complex mathematics I think that relationship still remains, and it seems to me that our society is wrestling with a problem very much related to this issue. What is the moral principle of the land? Are we concerned about the violence for children when in our society as a whole, one of the major problems is child abuse in our culture.

Reverence for life is something that is a continuing process. Prejudice is something that is of constant concern and so I would really like to have you entertain the considerations that I am concerned about; the idea of televising or the mass media or education, or any form of our society in which we approach on the basis that some things are—we do certain things at one level of age and we have another standard at the adult level. I certainly believe that this is a major problem throughout our society.

Doctor Northwhite, one of the great philosophers and mathematicians, a brilliant man, has stated that a great deal of a child's development, both conditioning and mind is set by the age of seven, and he attributes the primary influence on that life to the mother and so that is one issue. The second issue related to that is how do we affect society. I am sure there are various ranges. What does violence and obscenity, what do these things do to our society, and what my plea in general would be is that we should be concerned deleting violence and certain kinds of presentations that are not creating good, but how do we affect society and this brings us back to the importance of the mass media and the grass roots. We again many times affect things indirectly instead of directly. I often think that the Galilean never went to Rome to talk with the Caesars, but he talked to fishermen, tax collectors and the grass root movement, and we all know the impact that he had on Rome and the entire world. I think of Ghandi's effect in India.

In this area, what I am concerned about is what kind of atmosphere, climate, culture, do we find ourselves living in and how do we change that and that takes us to a point very related to that, that it seems to me that our discussion here and through much of our culture is for trying to delete that which is unworthy and when we think about the motivation of a culture and the people, it seems to me that there is much to be said for dramatizing that which has value. I find myself concerned here about suggesting that we are putting so much energy into what we ought to be deleting from the media. I find myself as a citizen who watches, I must confess, very little television, but the people I talk with and from what I hear, one of the things that is of real concern is that before we get rid of the negative we are going to have to give attention to the positive, what the former witness was talking about. One of the things that is so lacking in our society are television programs that have value, and the theater that has something to say and churches that have any message that's worth hearing and so we have dials that we spin because there is nothing better. As a preacher who talks to somewhere between 800 and 1,200 people on a Sunday morning, I have had to gradually modify some of my thinking on this. I think the greater motivation in any kind of communication is if we can create an image of that which is beautiful and positive and good.

I think there has been a tragic history in the church of damning sin, telling people what's wrong, trying to get rid of the negative, but it seems to me that in our churches or in the media that perhaps the answer is in creating the positive preventation of values of things which are good in life and I simple raise the question here with the subcommittee as to whether we might inadvertently give attention to something which is negative when we could be accenting those things which are of a positive nature. I happen to sincerely believe that whether it is in the home or media or wherever it is, that this accent on the positive experiences is something we are going to have to give more attention to. In family life, I am constantly dealing in counseling relationships with parents who are trying to tell their children what not to do and yet it seems to me that the most fulfilling, effective creative family relationship that I deal with are those where parents are not so determined about what their children should not do, but parents who inspire their children to have freedom of creative ideas, who have values that are worthy of development. So I raise that question this morning in this manner.

I start with the assumption that television is a major influence on our society. I think if you just put it in the dollar market, that if it were not an influence, the advertisers would not put all their money into it, so I begin with the assumption that it is a major influence; but is there a way rather than trying to restrict what we are discussing as being negative, is there a way to give more attention to seeing if we can upgrade it so that this becomes a more positive media.

One final comment I would have, and this comes down directly to my own feelings. When we are talking about freedom in this matter of mass media, all of us are expressing concerns about censorship and yet censorship can take place in many different ways. One of the things that I have encountered as a religious leader is that there is a type of censorship in the industry in-built about religious broadcasting and our fathers thought that the freedom of religion was vitally important. It was one of the tenants that they built into our heritage. In trying to reach out in the mass media in any kind of religious broadcasting, one is immediately confronted with the fact that the time that is available on the TV and oftentimes radio, many stations delegate this only to Sunday morning when not very many people tune in and I am critical here of what has been done with religious broadcasting. I think much of it has been ineffective, but as a religious leader, I do have some deep concerns about the mass media industry taking a prejudiced view that all religious broadcasting must be the same. It seems to me that I should not evaluate all blacks as being alike, I should not evaluate caucasians as being alike, and this is one of the things that I am trying to suggest, that the freedom of religion might be a positive influence on the individual, such as the mass media is a mass influence on our lives. I think somewhere in the subcommittee's deliberations it might be worth looking at.

Is there a prejudicial attitude so that persons or church leaders may want to do something more creative than is being done in broadcasting. That would be a breakthrough and be an influence. So I guess I will just close by saying that the concerns of this community are the concerns of all citizens.

I am raising the question as to whether there are some other approaches into this and there may be more than I know about.

[The following prepared statement was subsequently received for the record:]

STATEMENT OF REV. EARL K. HANNA, PASTOR, ARVADA UNITED METHODIST CHURCH, ARVADA, COLO.

(Inasmuch as I had not intended to make a formal presentation to the subcommittee, my comments were extemporaneous, and not printed in advance—as requested by the committee. In response to several requests received, to have an outline of the material presented, the following résumé has been prepared.)

I. The issue of double standards between adults and children in mass media and throughout our society.—It is my impression this hearing begins with the assumption that it is legitimate to have a *double standard* of moral and value issues, meaning more specifically, it appears to be assumed that certain expressions of violence and immorality are acceptable for adult listeners and unacceptable for children. I can see that we must recognize the difference between the learning and interpretation abilities of children and adults; however, I raise serious question about the seeming assumption that there is one level of morality for children and another for adults. If violence and killing are wrong for children—they are equally wrong for adults. To illustrate in another area, if dishonesty is acceptable for adults we cannot assume that our children should be honest. More closely related to the issue of violence and mass media, it is illogical to assume that reverence for life (which is the counterpart of violence) is an attitude of response to life that prevails for children, and then suddenly violence is enjoyed by adults. By the same process of reasoning, it is illogical to assume that we steep the minds of children in one form of sexual conduct when they are small—and then suddenly find another set of moral codes enjoyable and acceptable for adults.

Integrity in violence and morality, like honesty, must have consistent meaning and values throughout a society. I urge the subcommittee to carefully examine this issue of "double standards."

II. It is imperative to determine by what method change can most effectively be accomplished.—In the first report shared in this hearing by a psychiatrist, much of the data seemed to undergird the conviction that violence, obscenity and sex have negative influence upon young listeners. I assume this hearing is in process because there has been enough concern about this subject and enough evidence related to the seriousness of it—that further exploration of the issue is in order.

Assuming that violence and morality are issues being affected by the mass media, I would urge the committee to give consideration to the possibility of correcting the issue by emphasizing worthy programing, rather than trying to negate the unworthy. At the present time the theaters, churches, television, and some other areas of our culture are suffering from a lack of inspiring and worthwhile programing. I believe millions of Americans are being intellectually and emotionally starved for good programing at various points throughout our culture—and especially via mass media. Human beings eat unsavory food when nothing else is available—they watch offensive television when good programing is not available.

If we take seriously the thoughts of great men like Dag Hammarskjold, that the great challenge of our age is to become truly human, we must focus our attention upon using the theater, churches, television, etc. to inspire and enlighten people toward worthwhile living. Surely, no one can make a meaningful defense for violence on TV. The issue that is so often debated is how harmful it is. Throughout our culture we need to "accent the positive"—rather than trying to determine what is permissible.

III. Closely allied to the thoughts shared in the previous comments, is the issue of the right of religion to use television and mass media.—Perhaps these words are more appropos for the management of the media than for this committee; nevertheless, I would urge this committee to take this thought under advisement in their comprehensive study. Many of our founding fathers assumed that religious freedom was one of the basic rights of the citizens. Freedom of religion is being curtailed by mass media, through the policy of many stations prohibiting religious broadcasting excepting at the "Sunday ghetto" hours—when few people are listening. I am sympathetic to the problems of those responsible for the mass media; however, I think it is unfair to assume that no religious broadcasting can have an appeal to the masses of people. It is as prejudicial to put all religious broadcasting into a category, as it is to categorize all Blacks, all Caucasians, or all Orientals as being alike.

If it is reasonable to assume that "freedom of religion" is an important aspect of our heritage, then we have a responsibility to determine how it can be conveyed and communicated through mass media. There has been much concern expressed about censorship in this hearing. Censorship takes many forms. The fear of censorship by government is a rightful concern; nevertheless, censorship by prejudicial classification of all religious programming as being unacceptable to the general public is equally alarming. Censorship may be the product of government, or it may be the by-product of economics. I would urge the subcommittee to incorporate this concern into its study.

Many times we enter into the error of attacking problems from the wrong end. To illustrate, if a dermatologist were merely to prescribe ointments for blemishes on the skin, and not prescribe medicine to cleanse the impurities of the blood, stream which cause the blemishes—this therapy would obviously be ineffective. By the same process of reasoning, the efforts to remove violence and sexual irregularities from television may appear to be a noble cause and worthy of our concern; however, if we do not deal with the underlying issues, such as I have tried to suggest in this presentation, our efforts will be as fruitless as applying ointment to a blemish on the skin—without giving due attention to the impurities of the blood stream.

Mr. VAN DEERLIN. Thank you. Our obvious task is to stimulate some new directions in broadcasting, without overstepping. We are dealing with elements that we want to keep as free and independent as possible.

Do you have any questions, Mr. Wirth?

Mr. WIRTH. Thank you very much, Rev. Hanna for being with us.

Mr. VAN DEERLIN. We are grateful to you.

The next witness then will be Ms. Jane Hoback, from the National Organization of Women.

May we also have Mr. Willie Montoya, chairman of the Colorado Committee for Mass Media for the Spanish Surnamed and Mr. Peter Ney, attorney for the American Civil Liberties Union join Ms. Hoback, so that we may have a panel for this presentation? Is Mr. Montoya in the room? His statement will be made a part of the record.

[Mr. Montoya's prepared statement follows:]

STATEMENT OF WILLIE MONTOYA, CHAIRMAN, COLORADO COMMITTEE ON MASS MEDIA AND THE SPANISH SURNAME

Violence and sex on television is a reflection of the mentality of this nation. Television must be bathed and purged but so must the causes of this type of mentality. The causes of this mentality are in the social, political, and economic fabric of this nation and perhaps too interwoven to be separated. A change in the system with its inequities and injustices is what is needed if the sins of television are to be eliminated. As long as t.v. remains in the hands of merchants television will not change.

It may be that the purpose of t.v. violence is to inure people so that their minds can be manipulated and placated. Is it the intent of t.v. to tranquilize the masses so that the greedy and corrupt of this nation can continue their thievery and corruption without the interference of an aware and concerned populace? T.v. is the new opium of the masses and its lethal doses are being administered by merchants and hawkers for their commercial benefit. The use of murder and violence to sell deodorent and toothpaste is deploreable. Shouldn't there be a higher purpose for television?

Television violence is dangerous to children because of its redundancy and repitition. It is a conditioning process that can only end in maladjusted individuals. Also the lack of reality in television is harmful. It is bad enough inundating children's senses with violence and sex and even worse to put the violence and sex in a world of unreality-thus giving the children a doubly distorted vision of the adult world. Children are shown that all maladies are checked and repaired within the span of a half-hour or hour show.

Television is fostering a mentality that glorifies the intent and extent of violence. It is confirming that violence by "authorized" persons is acceptable. It is the reflection of this nation's mentality that says one must murder and maim in order to prevent crime, one must kill and destroy in order to save. It is a distorted mentality that is continually re-enforced and perpetuated by its own creations and inventions. So to change the outrages of t.v. the social, political and economic systems of this country must be changed.

STATEMENTS OF MS. JANE HOBACK, COCHAIRMAN, MEDIA TASK FORCE, DENVER CHAPTER, NATIONAL ORGANIZATION FOR WOMEN; AND PETER NEY, ATTORNEY, DENVER, COLO.

Ms. HOBACK. Thank you. By way of introduction, I am the cochairman of the Media Task Force for the National Organization for Women, Denver chapter.

The National Organization for Women is a civil rights group of men and women whose main aims and aspirations are to improve the lot of, opportunities for, and the image of women, thus bringing them into the full mainstream of our society.

The Media Monitoring Task Force of NOW has a main concern of insistence upon the portrayal of women in multiple roles as positive, competent, contributing adults, a responsibility we request the television industry to undertake.

Kathleen Bonk, national cocoordinator of NOW's Media Monitoring Task Force, speaking to the subject of de-stereotyping women in the media, states:

> A major obstacle in improving the status of women lies in public attitudes and values regarding women's roles in society. The mass communications media have great potential as a vehicle for social change and could exercise a significant influence in helping to remove prejudices and stereotypes accelerating the acceptance of women's new and expanded roles in society and prompting their integration into the development process as equal partners.[1]

A recent study [2] of the world of the heavy television viewer reveals that people who watch a great deal of television see the real world as more dangerous and frightening than those who watch very little. This report points out the authority television has in our society, and suggests that what people see on television becomes their concept of what happens in the real world.

One of NOW's main objectives is to improve the image of women in that all-pervasive area of the media, recognizing that this is one of the most persuasive forces operating in our society today. We are constantly bombarded with statistics to prove this, that is, there are approximately 112 million television sets in the 65.8 million American homes; 97 percent of all homes have one or more television sets. The number of homes with television sets outnumbers those with indoor plumbing. The average set is turned on 6 hours and 49 minutes per day, or approximately 2,400 hours per year. Just as impressive are the statistics that state that by the time a student graduates from high school, she or he will spend roughly 11,000 hours in the classroom and 15,000 hours in front of a television set, bombarded by more than 640,000 commercial messages.[3]

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[1] Kathleen Bonk, "De-Stereotyping Women in the Media." *ACCESS*, 1976.

[2] George Gerbner and Larry Gross, "The Scary World of TV's Heavy Viewer." Psychology Today, April 1976, p. 41.

[3] Siegel, 1975, in "Television: The Universal Curriculum In Sexism." Kathleen Bonk and Jo-Ann Evans Gardner, for the National Conference on Women in Education, second draft, May 2, 1976.

George Gerbner and Larry Gross, in their seventh annual report on the violence profile this spring,[1] stressing the powerful place television has in our society, drew a distinct correlation between the effects of symbolism, such as common rituals and mythologies and folk tales, and religion. They state that television has nearly replaced religion in our society as being the most believed, most all pervasive and effective method of drawing a vast-majority of the people "into the fold," so to say.[2]

What does this mean to the National Organization For Women, and to our goal of improving the image of women in the media? How do the subjects of today's hearings, sex and violence on television, and the effects of the family viewing hour, affect our goals?

Studies[3] have shown throughout the last 20 years, that women have been and remain grossly underrepresented in television programing as major characters. Gerbner has stated that in the simple world of TV plots, three-fourths of all leading characters on prime time network TV are male. Statistics[4] also show that in children's programing, like adult programing, males dominate the cast of characters, including puppets, muppets, animals, and people. Gerbner and Gross also state that representation in the fictional world of television signifies social existence; absence means symbolic annihilation. In other words, television, through overt means or neglect, has attempted to annihilate women, who in the real world represent 53 percent of the population

With these statistics pointing to the fact that males dominate the world of television, both in adult and children's programming, let's take a look at how the men on television treat the minority—the women.

Gerbner's Violence Profile revealed that, on the whole, females were less violent than the males on television; however, if they engaged in violence, they had a greater chance of being victimized. Studies have shown that not only do criminals learn their roles from television, but so do the victims. Television thus not only teaches the criminals to commit the crimes, but teaches women to be victims. Gerbner also states that among females, more vulnerable than men in most categories, both young and old women, as well as unmarried lower class, foreign and nonwhite women bore especially heavy burdens of relative victimization. Old, poor and black women were shown only as killed and never as killers. "Good" women, unlike "good" men, had no lethal power, but "bad" women were even more lethal than "bad" men.

The victimization of the "good" woman, Gerbner says, is often the curtain-raiser that provokes the hero to righteous action. Thus, when the woman herself is not the object of the violence, she is the cause of it.

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[1] George Gerbner and Larry Gross, "Living With Television, The Violence Profile." Journal of Communication, Vol. 26/2, Spring, 1976, p. 1973.

[2] Ibid.

[3] George Gerbner, "Violence in Television Drama: Trends and Symbolic Functions." In G. S. Comstock and E. A. Rubinstein (Eds), Television and Social Behavior. Vol. 1: Media Content and Control, Washington: U.S. Government Printing Office, 1972, pp. 28–187, and S. W. Head, "Content Analysis of Television Dramatic Programs." Quarterly of Film, Radio and Television 9, 1954, pp. 175–94; and Smyth and Dallas, *Three Years of New York Television*, 1951–53, Urbana, Illinois: National Association of Education Broadcasters, 1953; Nancy S. Tedesco, "Patterns in Prime Time", Journal of Communications, Vol. 24:2, Spring, 1974, p. 119–24.

[4] Nancy S. Tedesco, "Patterns in Prime Time." Journal of Communications, Vol. 24:2, Spring, 1974, p. 119–24.

Children's programing does not escape this pattern, except that the percentage of males to females is higher. As for violence, a study on girls in the cartoons [1] reports that when girls are shown (remember that 75 percent of all cartoon characters are male), they are shown in only a few typified roles, the "bossy" girl, the girl who stands around quietly watching the boys do the action, or the victim of either threatened or carried out violence. There is a highly recurrent theme of girls showing great romantic affection for boys, but the boys do not exhibit this behavior at all. Further, the adult humanoid types do tend, with alarming frequency, to kidnap females and drag them around.

As these studies show, when a program contains violence, the victim is a women more often than not—and a helpless one at that. The media committee of the National Commission on the Observance of International Women's Year has drawn up a checklist for the portrayal of women in entertainment programing and advertising for use by writers, directors, and producers. Two of the points they bring up are the subject of the exploitive "woman as victim" theme—questioning its place as the main entertainment value of the piece, and questioning the value of the woman as the hapless object of the brutalizing forces, making things worse by making panicky choices. The other question one should ask is "would the piece work just as well if a man were in her shoes? And, if a rape is shown, is it dealt with as basically a sexual experience, which it is not, or as a physical assault, which it is?"

At today's hearings, we are speaking to the subjects of sex and violence. Rape, which is a crime of violence, all too often is dealt with on a sexual basis in television programing. With few exceptions, the raped women "is asking for it." She is invariably young and beautiful; she usually lives alone; she walks the dark streets alone at night; she opens her door unquestioningly to anyone; and she knows nothing about how to prevent the attack.

Rape is a crime of physical assault and rape victims' ages range from very young children to old women. Beauty is no requirement to be raped. But in the world of television, we are supposed to feel sorrier for the victim if she is at the height of her youth and beauty—she therefore has more "value"—and the industry once again succeeds in sensationalizing a program at the expense of women. If the woman is even given that much time. All too often, the rape victim is pushed aside for the more important "plot." In most police/detective shows, which comprise 18 percent of televised programing, the female victim is completely forgotten as we become engrossed in the pursuit and inevitable glorious capture of the rapist by our hero. Rape as a crime is just another way to make the male star look good.

The other subject of today's hearing is also subject to the sensationalism of the television industry, sex. While volumes upon volumes have already been researched on the effects of violence on television upon the viewer, not much has been researched in the area of sex. Perhaps we take sex more lightly, or, with our puritanical background, it is easier to justify censorship of sex in television programing. It is easy to censor an intimate scene from a movie being rerun for television or to "blip" out a naughty word from a guest speaker on a talk show—the audience usually laughs and fills the word in mentally, or the imagination can fill in the intimate scene in the movie. The question is, why is sex censored more and studied less in television?

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[1] Helen White Streicher, "The Girls in the Cartoons." Journal of Communications, vol. 24 : 2, Spring 1974, pp. 125–129.

The phrase "women as sex objects" is by now probably an old, tired cliche to you, but television programing insists upon perpetuating the image of women on this basis. Time and again, a woman with a pretty face and a scantily clad body is used to add nothing more than irrelevant sexual interest to a program. It has nothing to do with the plot. It adds nothing to the development of the story. But it is a sure-fire way to rescue an oftentimes poorly written, mundane program. It will keep the viewer's attention if nothing else will.

By reducing the role of a woman to a thing in this manner, television violates her integrity and worth and therefore the integrity and worth of all women.

This sensationalizing is also evident in television programing on the subject of homosexuality. In the very few instances where the industry has attempted to deal with this topic, the networks have bungled badly. Except for our friends from "Mary Hartman, Mary Hartman," Ed and Howard, who have a real-life, healthy relationship, television limits its treatment—or mistreatment—of homosexuality to two areas.

One; the homosexual character is "sick" and is usually involved in perpetrating this illness on an innocent victim. Wake up industry! The American Psychiatric Association no longer includes homosexuality on its list of illnesses.

Or, the innocent character is wrongly accused of being a homosexual and is threatened with losing job, family and friends before his or her good name is cleared. These things do happen to homosexuals. Gay people are denied many of their civil rights. If the industry is going to deal with the subject, deal with these real problems in a responsible, intelligent, knowledgeable manner, instead of sensationalizing in order to sell.

What I have been talking about today is sexism, the unequal and grossly unfair treatment of women in the areas of sex and violence in the television industry. Whitney Adams of NOW, speaking before this subcommittee at a previous hearing, was asked what the difference between sex and sexism was. She replied, "sex is fun, sexism isn't."

We have heard the statistics on the millions of people who watch television for hundreds of hours in this country. From the several studies that have been cited, we know that many people derive their concepts and perceptions of the real world from the programs they watch on television. The industry has a powerful impact in this area. Women are intelligent, capable, competent human beings. If the television industry would take the responsibility, and we are asking them to, of changing its image of women to reflect this truth, the image of women in the public's eye would change drastically as well.

We have also been asked to comment on the family viewing hour. The basic concept of the family viewing hour is a good one, and the National Association of Broadcasters in voluntarily promoting this concept appeared to have done a good thing for the viewers, and especially for children.

However, the truth once again wins out. The television industry is, with all due respect, primarily concerned with being a money-making enterprise. However, one must remember that the airwaves the industry uses to make their profits belong to the people.

It appears there has been a definite drop in violence, in spite of the concept of the family viewing hour, and the fact that during that time, according to the seventh annual violence profile, there has been a definite drop in "family hour" violence, this decline has been matched by a sharp increase in violence during children's weekend and daytime programing and in violence overall during the current season, and by an even larger 2-year rise in violence after 9 p.m. e.s.t. So, in fact, we have simply traded less violence in a given time, for more violence during the rest of television viewing. It appears that the family viewing hour has been a stop gap at best, and we feel that the industry must clean up its entire act.

While the National Organization for Women must agree with the television industry in acknowledging the fact that television cannot be a surrogate parent, and that it is not the industry's responsibility to "keep watch" over children, however, one has to realize that, according to the statistics quoted in the Library of Congress issue brief on "Television Violence; Effects on Children" [1] from 9 to 11 p.m. there are 11 million children still watching television, and that number does not go down significantly until midnight, when in the wee hours of the morning there are only 743,000 children between the ages of 2 and 11 still observing, perhaps learning both the roles of the criminal and victim. We feel the industry must begin to take some responsibility for its actions in this society, not merely its income. We control alcohol, cigarettes, and drugs from minors because we fear the effects they may have on their developing bodies. Yet we allow the publicly owned airwaves to succumb, once again, to the power of the almighty dollar, thus bombarding ourselves and our children with violence on television. Poor nutrition has been proven to have a detrimental effect on the growth of childrens' brains; is it outlandish to assume that violence on television would have a similar detrimental effect on the minds of growing children.

As men and women trying to change the image of women in the media to a most positive image, we are convinced that the television industry uses sex and violence to sell. And, that too often women are the medium used to portray the sex and violence that sells television—a more overt form of sexism does not exist.

Mr. VAN DEERLIN. Mr. Ney, if we could have your statement at this time?

STATEMENT OF PETER NEY

Mr. NEY. So that my statement may be in proper perspective, I am not an employee of the American Civil Liberties Union. I am an attorney in private practice, and I have in the past done volunteer work for the American Civil Liberties Union. I believe that some of the comments which have been made have made an allusion to the fact that any regulation in this particular area could lead to the danger of censorship, as if any regulation in this particular area was not censorship. I think any regulation by Government agencies of content in television is indeed censorship, either censorship in the sense of setting certain standards or setting certain prohibitions regarding the dealing as to standards at certain particular periods of time. I think I will agree with all speakers who have spoken here today that television of course has a tremendous impact on the country as a source of information which is given to people and therefore it has a tremendous impact in the socialization of individuals in this country. For that very reason, I would oppose any regulation by the Congress of the United States as to content.

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[1] "Television Violence: Effects on Children." Library of Congress issue brief No. IB75061, by Edith M. Fairman, Science Policy Research Division, updated Mar. 24, 1976.

I think recent history in the United States indicates that a free, uncontrolled access to information does in fact, have a beneficial effect in the long run. I think that it is awfully difficult and I would submit, impossible, for the Congress of the United States, to set standards to achieve a social good to eliminate certain undesirable television material. I think that by placing the emphasis on attempting to eliminate either sexually oriented material or violence-oriented material, the end result is the control by the Government of what individuals hear and see in the most effective method of media, television. I think that I am not here to say that more sex on television is beneficial, but on the other hand, I think that no competent evidence has indicated that it is detrimental. In the area of violence, I think that Dr. Mendelsohn, who is certainly qualified in this area and I am not, has criticized the scientific evidence which supposedly underlies or gives justification to control of program content by a governmental agency.

I think that violence itself may be detrimental. The viewing of violence may be detrimental, but does that possibility really outweigh the known danger of governmental control of material which is presented to the public. I would submit that probably violence does not serve a beneficial effect, but I would suggest that the viewing by the mass audience of the violence that occurred in Vietnam did in fact lead somewhat to the end of that violence. The fact that the violence brought into the living room of the American people did change public policy. It is very difficult and I will again say, I will submit it is improbable for the Congress of the United States to have a social good in mind and set certain standards while prohibiting certain types of material to be broadcast on television, without realizing that different contexts, such as prohibition, cause a great social evil.

I think any Government control of the media program content, would in fact, in the long run, cause a great social detriment, rather than an alleviation of any possible short-run promotion of social good. The first amendment, which was framed somewhat less than 200 years ago, does prohibit the Congress from enacting legislation which does control the freedom of speech and I would submit that although we are talking about a media that was not conceived of 200 years ago, I would say that principle should guide the Congress of the United States and I would submit that that principle should be a principle which the Congress attempts to broaden, rather than attempt to come as close as possible to finding exceptions to that particular principle, and therefore I would submit that the Congress should not in any manner attempt to control program content.

The Constitution of the United States expresses a faith in the people of the United States, that the people of the United States can accept or reject ideas. I think that the comments of Reverend Hanna and the comments of my fellow panelists here indicate more the danger of censorship than an endorsement of censorship. Reverend Hanna would propose that more good material be presented on television. I think my fellow panelist is also speaking about a change in attitude toward women. Now, I do not disagree that the television industry should present better quality programs, more honest representation of women and other minorities, but I would submit that the Congress of the United States should not set those standards and attempt to enforce that by legislation.

Thank you.

Mr. **Van Deerlin**. Should such standards be set at any level of government?

Mr. **Ney**. I would not enforce those standards be cut, because those standards being set, would in fact be censorship. Dr. Mendelsohn said a presentation of the Bible can be considered violent or it can be an undue sexual representation. The works of Shakespeare could also be so interpreted. I do not think that the first amendment deals with merely good material or acceptable material, cause much material in either literature, drama, or the dance, or whatever at the time of its introduction, if it is indeed creative, may in fact, not be acceptable to many people and through the passage of time it does become acceptable and I think that legislation or control by any level of government is indeed censorship and carries with it the dangers which I think have been apparent in recent history.

Mr. **Van Deerlin**. What should be the role of the FCC in granting of licenses on a newly available television channel or radio band, and what should be its attitude at renewal time?

Mr. **Ney**. I think the standards which the FCC uses now regarding public interest program, how much is locally produced, those things that do not deal with the content itself or regulation of content, but merely deal with the appropriate role. Since we are dealing with a limited access media, I think the FCC can look in the broad categories regarding how a station performs its function in a community where it is licensed, but not on the issue of content, regardless of what that content may be.

Mr. **Van Deerlin**. Dr. Mendelsohn also pointed out that it is economically difficult, or appears to be difficult, for local licensees who are the responsible holders of licenses to undertake local programing. They tend to become simply a conduit for what the network serves up.

Mr. **Ney**. I think that's true, but I don't think that you will solve that particular problem by saying to a network or to a local station, during these hours you cannot broadcast anything in whatever area, whether we are talking about sex or violence, because the step which the Congress would take, once it undertakes that type of censorship, the next step obviously is that we must produce good things, we must produce things that are most socially acceptable, we must produce things which are more beneficial to the structure of the United States. Then we go on to things, there must be programs which are pro-American, there must be more programs conducive to our system of

Government and any material which would be critical could then be considered un-American or material could be considered a threat to the national security.

Mr. VAN DEERLIN. How does Ms. Hoback suggest rectifying the wrongs that she sees being perpetrated on people?

Ms. HOBACK. I think there are methods, and I think Dr. Prugh, I think that actually came from Representative Wirth in reading a recommendation by the American Medical Association that products may be boycotted, pressures now can be brought to bear on either sponsors or to network programers, writers, producers, and in this particular area, and I think that is a very legitimate way of controlling program content or putting material on the air which should be gotten on the air but not through the vehicle of the Government. I think sponsors are going to pay attention to these sorts of things. There was a program which made the National Rifle Association look poor and the National Rifle Association thought it was very unfair and they went after the sponsors. I think that's appropriate.

I think that in a free society those vehicles are open to particular groups that have particular points of view and who wish to have certain programs on the air. I think certainly the National Organization of Women does have a political clout, not in a governmental sense, but I think that certainly the sponsors I think would be extremely responsive to pressure from organizations such as NOW. I don't think it should come from the Government.

Mr. VAN DEERLIN. Well, suppose there is a new market area where there is a television channel available, and there are three or four applicants for the channel. What sort of standards should the FCC impose in making a license award—should they put it up to the highest bidder?

Ms. HOBACK. I think that there are many criteria which I am sure they use which don't deal at all with the programing. The financial stability of the organization, the experience of the people who have been operating it, the types of programs which they propose. How much news they intend to propose to set forth, how much local news they intend to set forth, how many discussion panel type things, but I think that——

Mr. VAN DEERLIN. Should their performance be weighed against their promise?

Ms. HOBACK. Yes, I think it should be, but I would think that it would be inappropriate to have them say well, you had a show at a particular time and we consider that show too violent, and therefore we give you a bad grade in that particular area, or you used a certain word on television, this sort of thing, I don't think that is appropriate.

Mr. VAN DEERLIN. What if there is an independent station in Los Angeles which had shown the movie Jack the Ripper 25 times? Should that not be considered?

Ms. HOBACK. Yes, I think it should be considered even if they have shown the Wizard of Oz 25 times. I think that's bad programing to show one program, but it is not bad programing in a sense, because it is Jack the Ripper. I don't know if it is Jack the Ripper I'm thinking of, the old movie. I think there are a lot more violent things on television now, but there are a lot of bad programs like Francis the

Mule being shown every single week. They would do the same program, that's bad practice and I don't think it should be programing because it deals with sex or violence.

Mr. **Van Deerlin**. Do you feel your interests, and the interests of your organization, are adequately protected by the position enunciated by Mr. Ney?

Ms. **Hoback**. Well, I did want to point out one thing, that if we could have monitoring of television during license renewal and it does have to do with program content respecting women, not showing them for what they are and employing more women at the station, but also the kind of programing that depicts women in various roles.

Mr. **Van Deerlin**. Mr. Ney, would you find that offensive?

Mr. **Ney**. Yes; I would say that any pressure by her organization to the station. In other words, presenting to the station facts that their content is sexist, that their content is demeaning to women and therefore they should change their content, I think is perfectly acceptable, but not through the agency of Government. As far as the employment of women, I think there is legislation that covers that and that's not related to the content.

Mr. **Wirth**. Thank you, Mr. Ney. Nobody on the subcommittee or in Congress is talking about censorship. That's a very broad term or umbrella that we throw over the whole thing. The issues are much more ambiguous. Who is going to define what is bad programing, who makes that up?

Mr. **Ney**. I think these definitions are set forth by the FCC regulations which do not deal with content. My argument is that if you say there has to be less sex and violence on television or else we are not going to renew your license and if you go further, and say a program has a partial theme of violent activity and it can only be shown at a certain time or if you say that the Government does require, there are some sort of requirements as to sex to be given in the material in advance, that's entirely different thing, I think than saying when a program comes up in a renewal, license renewal, you have shown the same material over and over again, and do not have any variety in your material, you have not presented sufficient newscast as you said you were going to do in your application, in fact, you don't even have a news department in your station and all you are using the station for is to re-run old movies, whether it be Jack the Ripper or Francis the Mule, and you supply that to sell——

Mr. **Wirth**. How do you define, to take another aspect of this, the equal time and fairness doctrine?

Mr. **Ney**. I believe that Congress has become aware that there are certain shortcomings in the equal time and fairness doctrine. I think that the fairness doctrine, equal time has become a workable solution to present more materials to the public. In other words, when the Congress has become concerned about those doctrines, it has become concerned because television stations become reluctant to broadcast controversial material because they then have to give equal time. I think that's the bad aspect of it. But I think the intent of the equal time was that more information be given both sides of an issue and be prepared, but I think there are obvious shortcomings to that also, because it gives the television stations great concern when they broadcast controversial material and therefore, I would say that goal should be to have more controversial material not to have it restricted, but less controversial material or have a prohibition against controversial material.

Mr. **Wirth.** That's not the intent of the equal time—to restrict——

Mr. **Ney.** But I think that's the result.

Mr. **Wirth.** Does the same thing have to apply to the print media?

Mr. **Ney.** My particular feeling is that in the print media, the only excuse or the only justification for equal time or fairness is in television, because it is a limited access media. I will say that any legislation that would deal with the news media or any other like magazines or public speakers, the fairness doctrine or equal time would be totally out of place. The only justification is the limited access, and I would say that legislation which has been passed in certain states regarding equal time or fairness in newspapers is totally contradictory to the concept of the first amendment.

Mr. **Wirth.** Given the fact that there is limited access, limited air waves, that the electronic media therefore has a different kind of responsibility——

Mr. **Ney.** Yes; they have a different responsibility, but I don't thin the responsibility should be used to carve out an exception of governmental control to program content of the first amendment.

Mr. **Wirth.** The question is then, how do we assure these special responsibilities are met. Ms. Hoback, I would be very curious as to how you would think you could influence or you could, or anybody should influence program decisions for the purpose of meeting what I would assume you would agree is a special responsibility? I would assume that is a special responsibility to the electronic media?

Ms. **Hoback.** Yes.

Mr. **Van Deerlin.** What do we do to assure that the responsibility is met?

Ms. **Hoback.** We have tried many ways. As I said, at license renewal time we did have a petition, and we have in Denver set up some agreements with the network as far as network programing respects women. As far as I can see up to this point, that is our most effective tool.

Mr. **Wirth.** How many licenses have ever been denied?

Ms. **Hoback.** I don't know, I don't have the figures.

Mr. **Van Deerlin.** In television, it is three, but only two of them were picked up by the Commission. One was yanked by the courts.

Mr. **Wirth.** That does not appear to be——

Ms. **Hoback.** In many cases petitions to deny were rescinded because we made agreements with the stations and things like that before the license was denied.

Mr. **Wirth.** In any case, if the problem of sexism is as dominant as you say, then the question still remains what kind of pressure can you place to eliminate that, if it is your goal to do that? The petition to deny does not seem to be an effective route, given the fact that only three petitions have been denied.

Ms. **Hoback.** As I said, we have you know, formal agreements in lieu of the license being denied. We have also been putting pressure on the advertisers and that seems to be effective in that advertisers pull their advertising and it is a loss of income, and that seems to hit home.

Mr. Wirth. Your testimony didn't suggest any movement——

Ms. Hoback. What we are trying to point out in this testimony is how the women are subject of violence.

Mr. Van Deerlin. The question then is what do we do about it?

Ms. Hoback. Well, I'm not sure as far as Government regulations, you know, what we have in mind. I think that we would agree that the idea of censorship is not a good one. As I said our, you know, our main area, we are concentrating in right now is monitoring and setting up these councils.

Mr. Wirth. Does the Government have any role in that?

Ms. Hoback. Government issues the license and the Government doesn't think that the stations are performing in the best public interest, we try to bring it up and that's a Government role. I think that's the role of the Government to take our testimony seriously and to take it into effect when they are issuing licenses.

Mr. Wirth. I guess I have a difficult time understanding why that does not become a form of censorship. That's very much getting into programing and content? We're back to an inherent——

Ms. Hoback. I think it is a good thing to remember as I said in my testimony that the public owns the airways and if the public interests aren't being best served, then the networks should do something about it.

Mr. Van Deerlin. Every citizen has one person he can go to, and that is his Congressman.

Mr. Wirth. You put your finger right on a great part of it. The public owns the airways. On the other hand, it is protected by the first amendment, by the Bill of Rights, that is an additional area in which we are operating.

Any further comment?

Mr. Ney. I think——

Mr. Wirth. The point I would like to make is that the simple issue of censorship is not the way to cope with the question. The question is much more complicated than that, I think. I think Ms. Hoback stated in her testimony that the public owns the airways.

Mr. Ney. I don't think there is any question that the public owns the airways. I think that there is no question that some programing is poor. I think the Government has some control regarding the issuing of licenses and has some control regarding the relation of time. Types of program to achieve certain long-range social goals but I think that when you get to the issue which is before the subcommittee of sex and violence in attempting to define it, and take it out either at certain times or entirely, then I think you can't get away from the issues which are really here and essentially Dr. Mendelsohn certainly again amply illustrated as to how it would be absolutely impossible to define what is violence in a different context. I think that the most effective remedy which NOW has found is a remedy which I think is perfectly legitimate, that is negotiating with the stations, with the sponsors, and having your feelings aired, because I think that no television network is now saying, you know, the public be damned, we are not at all interested in public reaction, but what I am opposed to is the clout of Government being used to further those ends of presenting women in a more realistic fashion.

Mr. Van Deerlin. I am a little weary of the clout of sponsors.

Mr. **Ney**. I am also, but the clout of the sponsor is less dangerous and I don't think that we can get away from the clout of sponsors as long as you have commercial television. The clout of the sponsor is I would submit, less dangerous than the clout of Government.

Mr. **Wirth**. Just to finish this out, we are saying there is a responsibility at license renewal. I would gather that the position is that prior to the decision being made, pressure can be brought to bear and that's the time at which Government does that and the Congress at license renewals by the FCC. This subcommittee's Congress has responsibility over citizen responsibility over the FCC which is a, you know, a creature of the Congress, not made out of whole cloth some place and not a creation of the administration, but a creature of law passed by the Congress and therefore, elected by the people of the country, and therefore it would follow it is appropriate that we give guidelines to the Federal Communications Commission as to what could be involved in the license process.

Mr. **Ney**. I think so.

Mr. **Wirth**. At that time, it would be appropriate that we might receive recommendations from NOW or the ACLU on what should be in those guidelines presented to the FCC by the Congress.

Mr. **Ney**. I would think that's appropriate.

Mr. **Wirth**. That would seem to a very good step toward some direction in this area, rather than talking about the broad aspects of censorship. We have perhaps arrived at some agreement. One final question, what's your experience been with the broadcasters in Colorado in relation to the concerns you expressed?

Ms. **Hoback**. I will say that it is always difficult to talk to the local stations about trying to do stereotyped women, because most stations, you know, are pretty typical in their portrayal of women. I have a mixed reaction about it. It is difficult for us to get in there. It is difficult to form an agreement with them and I think we are making small steps, but I am certainly not satisfied that the results that we have here in Colorado—I think we have to go a lot further away before we will be satisfied.

Mr. **Van Deerlin**. Thank you, both of you.

I think our witnesses this morning have been very free and open and helpful on this subject and we appreciate their assistance. The subcommittee will resume at 2 o'clock to hear the testimony from two television critics from the local newspapers and as soon as possible afterwards, we will hear from the broadcasters and their representatives.

We will be in recess until 2 o'clock.

[Whereupon, at 12 noon the subcommittee hearing recessed to reconvene at 2 p.m., the same day.]

AFTER RECESS

[The subcommittee reconvened at 2 p.m., Hon. Lionel Van Deerlin, presiding.]

Mr. **Van Deerlin**. The hearing will resume.

I am Congressman Van Deerlin of California, chairman of the Subcommittee on Communications. With me is Congressman Tim Wirth of these parts, and also with us is Alan Pearce,[8] professional staff member for the Subcommittee on Communications, and Robert Sachs, legislative assistant to Congressman Wirth.

Our first two witnesses of the afternoon are the kind to whom we can look for absolutely objective testimony inasmuch as they are press observers.

They are Mrs. Barbara Haddad Ryan of the Denver Post and Mr. Dusty Saunders, of the Scripps-Howard Rocky Mountain News.

Mrs. Ryan, would you proceed?

STATEMENTS OF MS. BARBARA H. RYAN, THE DENVER POST, AND WALTER (DUSTY) SAUNDERS, THE ROCKY MOUNTAIN NEWS

Ms. RYAN. My name is Barbara Ryan. I have been a member of the Denver Post staff for 14 years, and was television-radio editor from December 1970 to February of this year. I am the mother of two television viewers, age 4 and 6.

After the family viewing time premiered last fall, the reaction I got in calls and letters fell mostly into two categories.

The first was from viewers who worried that they would be subjected to bland kids' stuff just because some parents can't control their children's viewing.

Some of them also believed rumors that Chairman Richard Wiley of the Federal Communications Commission had forced it on broadcasters, and they considered it blatant Government meddling in programing.

The second category was parents who said, in effect:

> It's about time they did something. But did you see that really gruesome movie the other night after the family hour?

Many parents felt the concept didn't go far enough, and some worried that "advisories" or disclaimers would attract adolescents who watch a lot of TV by themselves. Several persons asked why the networks don't rate their shows in newspaper listings.

I should note that the network affiliates in Denver don't indicate, in the schedules they send the newspapers, when a show carries an advisory.

The people I heard from who objected to family viewing time were by no means in favor of violence. Their major concern seemed to be that network comedies would revert to the mindless fluff of the 1950's, with none of the social relevance and sexual candor pioneered by Norman Lear.

Likewise the parents who wrote or called me were far more worried about gratuitous violence than sex.

The calls and letters on family viewing time weren't especially numerous. Denver may not be too different from the national sampling in an Opinion Research Corporation poll last October that found 58 percent of those questioned never heard of family viewing time. By April, this figure had dropped only 8 percent.

People I encountered face-to-face last fall—and beyond—did ask why family hour ends in Denver at 8 p.m., but not until 9 p.m. on both coasts.

I understand that the reason is money: the cost of delaying network feeds to the interior. With network profits at record levels, it might be an excellent investment to make family time uniform nationwide.

It would help prove that network motives are sincere, and possibly counter criticism that family time is just a public relations gimmick to avoid stronger measures.

Almost one-third of the Nation's TV households are in the large central time zone. Add to that the viewers in the mountain time zone, which includes Denver, and we get a sizable audience that starts seeing adult shows at 8 p.m. Children there are not likely to go to bed earlier than their contemporaries in Bethesda or Scarsdale.

As I noted earlier, some parents told me that not even 9 p.m. would be much of an improvement. Nielsen figures bear them out, indicating that 20 million viewers under age 17 are still watching at 9 p.m. I even got suggestions that family hour extend to the late newscast.

Few if any viewers I heard from raised what to me is a basic problem with the concept: the lack of specific criteria and definitions. It also disturbs producer and writers, who, of course, took the issue to court.

They apparently feel they're at the mercy of network watchdogs who operate as Justice Potter Stewart does on pornography: he can't define it, but he knows it when he sees it.

I shared their reservations from the day last year the three network chiefs emerged from Mr. Wiley's office, through my summer interviews with actors and producers in Los Angeles, and into the fall season after the National Association of Broadcasters adopted the concept into its television code.

In one sense the cries of pain and outrage from the so-called creative segment of the industry were hard to take seriously. The first amendment rhetoric would have been more persuasive if, up to then, they had been treating us to edifying masterpieces every night. Or even once a week.

And there was the nagging suspicion that the underlying issue wasn't freedom of expression, but the loss of highly lucrative syndication sales in early evening slots because a show couldn't qualify as family viewing.

However, it is undeniable—in fact network spokesmen admit it—that there were some silly judgment calls early in the season. Producers played "Can You Top This?" with their favorite horror stories, many of them duly reported in the press, on censored words and subjects.

Typical was Cloris Leachman being told to say "totally innocent" instead of "virgin," inspiring from her the logical retort that not being a virgin must mean being guilty.

Things relaxed enough by January for Rich Little's new show to feature a family hour fairy, a parody of Billie Burke in The Wizard of Oz, who is constantly pestered by lecherous men.

Little's show, as it happens, was a midseason replacement for one of the 13 new series that had been canceled after low ratings in family time slots. Only three of the newcomers in that hour have survived into next season: Miss Leachman's "Phyllis," "Welcome Back, Kotter," and a retooled version of "Doc."

All three are comedies, and family time can be credited with strengthening the healthy trend to comedy at the networks.

But it seems undeniable to me that family time has placed unfair burdens on the comedy series while having almost no visible impact on the real villains, the violent crime shows, which run later.

As a mother, I'd much rather have my small daughters exposed to the double entendres on "M*A*S*H"—and the single ones too, for that matter—than the killing and maiming on the so-called action-adventure programs.

Parenthetically, I'd also prefer sexual innuendo to the raging neurosis and overt sexual dialog on the soap operas and the flaming greed on the quiz shows.

Family time has been a failure in protecting younger viewers from excessive violence. Too many children stay up too late and watch too many victims being battered on too many crime shows.

Of course, children can be selective. A colleague at the Post reports that his 11-year-old son watched "Starsky and Hutch" as usual last week, but switched to "Swan Lake" on PBS during the commercials.

Aesthetic defenses can be made for murder mysteries as an ancient and valid dramatic form. There also are pragmatic arguments, like the need to sustain excitement past the next commercial.

There is also the economic fact that it's cheaper to hire a hack who can crank out car chases than to seek out writers skilled in plot structure, interesting dialog, and credible character development.

Amateurs approach studies on violence at their period. For instance, Dr. George Gerbner of the University of Pennsylvania, in his annual violence survey, includes all violent acts, even in cartoons, and in most time periods. In contrast a recent CBS study examined only intentional serious actions, mostly in prime time.

Another maternal footnote: With 4 years of Saturday morning monitoring behind me. I find there, enormous strides in wholesomeness and good intentions, if not always in imagination and quality.

Dr. Gerbner's latest thesis already may have been discussed here today, but I must mention the part I consider most disturbing.

He finds that among viewers who watch more than 4 hours of television a day, more than half of them significantly overestimate the violence in the real world. They think they have a 50–50 chance of a violent personal encounter in a week, while the actual odds are 1 in 100.

Experts continue to argue about the effects of televised violence on children, emotionally stable or otherwise.

But Dr. Gerbner's data leaves little room for complacency about its impact on TV-addicted adults. The risk isn't so much that they'll imitate some addled video tough guy, but they will become insecure, passive, and vulnerable to exploitation by authority figures.

The average American TV set is on more than 6 hours a day, and 97 percent of U.S. homes have at least one set. That adds up to a lot of heavy viewers in Dr. Gerbner's terms. I find his thesis frightening.

Although I'm not entirely confortable with FCC Chairman Wiley's role in establishing family viewing time, I agree with what he said in a speech to religious broadcasters.

He challenged programers to give us adventure, excitement, drama, mystery, jeopardy, conflict, emotion—all the basic elements of the classic art of storytelling, but without gratuitous sex and violence.

Especially violence.

Thank you.

Mr. VAN DEERLIN. Thank you, Mrs. Ryan.

Mr. Saunders?

STATEMENT OF WALTER (DUSTY) SAUNDERS

Mr. SAUNDERS. Fifteen years ago, before I watched and wrote about television as a way of life, I regularly watched a private detective series, "Peter Gunn."

"Peter Gunn" was a moderately-violent private eye drama, with overtones of subtle sex. One night an episode aired about Peter Gunn, the hero, trying to aid an alcoholic who was sobering up for an important business and family weekend.

One graphic scene showed the alcoholic, shaking from the DT's, seeing all sorts of wild images before his eyes, including spiders climbing the walls of his bedroom.

Our 4-year-old daughter watched the part of the show about spiders on the wall. It bothered her for weeks. She would have nightmares and would wake up screaming, afraid she was going to be attacked by spiders.

Somehow, the charm of "Peter Gunn," even though it was well-acted and well-produced, was lost in our family after that.

This case illustrates, I think, an often overlooked fact about the continual debate concerning violence on television: Violence can be a very subtle thing. What is violent to you may not be violent to me.

Certainly, during the 4-year run on "Peter Gunn" there were episodes which featured killing—stabbings, gun battles, and lots of fairly brutal fisticuffs. Our daughter, at 4 years old, didn't to our knowledge, watch "Peter Gunn" with any regularity. But still, I feel she wouldn't have been as deeply affected by a gunfight as she was by the very graphic spider scene.

Another example: "The Little House on the Prairie," a current Wednesday night series on NBC, is considered by most critics and parents as legitimate family hour entertainment. This assessment probably is accurate. The series does evoke images of family love and understanding between parents and youngsters during a time 100 years ago when life wasn't easy.

But I have a friend who has a 6-year-old son who, on several occasions, has panicked watching this series because one of the youngsters was in danger. Obviously, things turned out for the best before the final commercial. Still, these episodes have really panicked this youngster. The majority of kids probably watch "Little House" and are delighted by the family relationships and the spirit of adventure which is integrated through the series.

Again, what is violent for one youngster may not be violent for another.

And this is a problem; parents, the TV industry, and those interested in curbing TV violence at the Federal level have not been able to solve.

Most people, I think, would be in agreement that there is too much violence on television. And, of course, there are obvious examples of gratuitous violence which are offensive to everyone. This sort of violence needs to be curbed. And I think the networks, television producers and everyone connected with the TV industry are aware of the pressures being put on them to completely eliminate this unnecessary type of programing.

But as the pressure on the TV industry increases to remove violence from TV, the problems of subtle violence are going to be very difficult to define. And frankly, it will be very difficult to legislate or pressure a program to eliminate particular scenes which will draw a mixed reaction.

Think again, if you will, the example of "Little House on the Prairie."

If the present pressure continues, the extreme type of violence, which drew so many legitimate objections, should be a thing of the past. But it is the subtlety of violence which will remain. And this is something which each family will have to contend with. All the letters to the networks, all the pressure group reactions, all the threats of Federal intervention, will not solve the problem of subtle violence.

This problem will be solved only by individual families who are constantly aware of what is on the screen and exactly what type of programing their children can and can't handle.

As a writer, I have never pretended to be a psychologist. Still a psychologist friend of mine pointed out something recently which makes a lot of sense and goes a long way in showing why TV violence has become such a hotly debated issue in this country today.

I grew up in the pre-TV era. A lot of my screenwatching was done in the dark theaters of a Saturday matinee, where violence often reigned supreme. I have recently seen, as an adult, some of the violent films and serials which were so part of my life as I was growing up.

To my knowledge I was never adversely affected by this violence and neither were the majority of my friends. So why the fuss about violence on television?

The fuss is because the environment was so much different when I was growing up. Going to a neighborhood theater to see a sometimes bloody serial was a conscious event—the excitement of getting out of the house, the intrigue of going into a dark movie theater. I guess I even looked forward to getting scared. Then, I would leave the theater and go back into the normal, safe environment of home.

But TV has provided an entirely different life. Kids walk into the room, flip a switch and violence is there even if they don't want it. It can become, unfortunately, a way of life. And again, the final burden of determining what family members see rests with the parents.

The constant question about violence—and to some degree sex on television—was mainly responsible for the networks going to a family hour concept of programing, 2 hours of early evening programing supposedly free of violence and sex and presenting programing the entire family can enjoy.

In Denver, the family viewing is between 6 and 8 p.m. In Boston it's between 7 and 9. Does this mean the kids in Denver should go to bed an hour earlier than the kids in Boston? That question is raised, not merely in jest, but as an example of how initially the family hour concept was bungled because it was not a conscious effort by all parties concerned to do something constructive.

The family hour concept, as I understand it, was brought about through the Federal Communications Commission putting pressure on the networks, who, in turn, put pressure on the production companies to produce family hour programing.

Unfortunately, there was very little dialog between the FCC, the networks and the production companies. Edicts replaced communication. The result: actors, writers, producers, and directors sued the networks and the FCC, saying the family hour violated terms of the first amendment.

The suit does seem ludicrous, since the production companies certainly don't have clean hands. Some would produce violent shows simply to make a buck.

But the point should be well-taken. The family hour concept, which went into effect last September was not a failure. But it was not nearly as successful as it could have been because of this lack of dialogue between all parties concerned.

The result often was a ridiculous debate. The networks got scared. Should the word "virgin" be left in a comedy half hour at 7:30 p.m.? How many gunshots can be fired in a family hour show compared with a show aired later in the evening.

When the family hour is over at 8 p.m., does the raunchy, anything-goes hour take over at 9 p.m.? Again a lock of dialogue.

Thus, the family hour concept, which is basically a legitimate concept, ended up being a negative situation. Everyone argued about what couldn't be put into the family hour, rather that what type of creative programing could be put into that time period.

An example: ABC, during the fall and winter months, airs a monthly drama series titled "After School Specials." These are original TV dramas aimed at youngsters from the 6 to 14 age range. The drama deals quite honestly with problems the youngsters can associate with.

They have been relatively successful in this late afternoon time period, since they are basically designed for kids watching TV after school.

At the same time these were dramas which the entire family could enjoy. It was suggested to ABC these dramas be repeated this summer or early fall in the family hour time period as family hour entertainment. ABC is reportedly considering the move.

This would be an example of positive family hour programing rather than the negative approach.

I recently returned from the Hollywood area, where I previewed some of the fall programing. The TV industry is family hour conscious. I think the family hour concept will mean more this year than it did last year. There seems to be less bitterness about it. And there are programs which are designed for families, with the emphasis on youngsters.

A prime example is a new Bill Cosby show, on ABC, scheduled in family hour time on early Sunday evening. This variety show is being produced with youngsters in mind. Cosby who seemingly has a way with kids, will do variety acts with them on the show and will talk with them in the audience.

The networks and the producers still feel the pressure about violence. There seems to be a trend toward oldfashioned adventure shows, rather than the brutal-by-nature stories involving police and gangsters. One adventure series is "Spencer's Pilots," which deals with a trio of daredevil pilots. The emphasis is on adventure and action, rather than brutality.

It would be foolish to say violence will be completely eliminated this season or any other season. But the pressure is on. Still, the subtle violence will remain—what is violent to you may not necessarily be violent to me.

Many viewers are concerned about language and sexual talk on TV, particularly in the early evening hours. Again, much of this is in the eye of the beholder.

However, there seems to be a growing trend toward more adult programing particularly in the drama field, in time periods away from family viewing.

Taste rather than taboo will be the guiding light in this area. The TV industry is much freer these days in the dramatic areas. Subjects are investigated which were ignored before. But they will be out of the family viewing time.

In summary, the pressure has helped cut down on the violence. But the final determination will always rest with the ability of the head of the household to have a flexible wrist which can change the dial.

Mr. **Van Deerlin**. Thank you, Mr. Saunders.

Do you critics get a good deal of input from your readers, either by telephone calls or mail? Do you get a considerable amount of mail?

Ms. **Ryan**. It depends on what's happening. This time of the year it is a little slow.

Mr. **Van Deerlin**. You mentioned correspondence you had with some readers over the Wiley connection with the family viewing?

Ms. **Ryan**. Um-hum.

Mr. **Van Deerlin**. Was this widespread, or was this rather isolated? Was there concern about the heavyhand of Government being involved here?

Ms. **Ryan**. There were not all that many letters and I don't know if it is Dusty's experience, but often I find that people are really emotionally involved in something will sit down and write something out. The impulse seems to come on the phone, so I often take my mail more seriously because of the phone and because of there was extra effort offered. In numbers it wasn't high.

Mr. **Saunders**. When the family viewing was first proposed and announced, it was going to begin last fall, I received a few letters and a lot of phone calls and the type of phone calls were usually two ranges. First, there was a lot of confusion as to exactly what the family hour meant, and I don't know if Barbara agrees with me, there always has been confusion about exactly the role that the FCC plays with the networks and how the network integrates the producers. The comments I received were things like it is about time that we have this, the family hour is needed, there is too much sex, too much violence on the television, particularly in the early evening and then they will zero in on a particular show that they discovered was still going to be in during the family hour time and wondered why that particular show which was a bad show was not taken off the air or moved out. Much of it is a personal reaction.

Ms. **Ryan**. I got more comment before the new shows premiered than afterward.

Also, Dusty is absolutely right, the public really doesn't understand the FCC's role. They are calling saying I am going to have the FCC to take that station off the air. They do think that the FCC can legally take that show off the air.

Mr. **Van Deerlin**. I was interested in the economics on which both of you touched. You particularly, Mrs. Ryan, mentioned economies to the producers in producing a lot of footage of kicking and fighting and shooting and chasing which might be a form of keeping the budget down, inasmuch as it doesn't involve the highly paid stars or much change in scenery. That's something I would like to know more about.

Another thing you put your finger on is the cost of network feeds into these various time zones. If there is one network feed after the live performance on the east coast and central time, that one going to the west coast and the Rocky Mountains, I wonder what the costs are of additional feeds. Maybe that's the answer, because it does seem ridiculous to assume that people in the interior of the United States have children who go to bed an hour earlier than where two-thirds of the people of the United States live.

Mr. Wirth?

Mr. WIRTH. Thank you. I was wondering if either of you have seen the recent statement by the American Medical Association?

Ms. RYAN. The brand new one?

Mr. WIRTH. About 2 weeks ago at the Dallas convention of the AMA it says that the house of delegates yesterday approved a resolution urging all physicians to oppose television programs containing violence as well as products and services sponsoring the programs. The resolution was a milder version of the original proposal which said that TV violence is a risk factor threatening the health and welfare of young Americans, indeed our future society. The original resolution called on doctors, their families and their patients to boycott the products of any company that sponsored television shows containing violence. It appeared that the American Medical Association and I don't think that is a very radical institution, is very concerned about the effect of violence on television, on children and child development. They focus here on family viewing hours, 6, 7, 8, or 9, depending on where you live. The figures show that if a violent profile on the average is 3.8 incidents per hour during the family viewing hour, it is about 16.2 for children's television on Saturday morning. It might suggest that if we are concerned about the causality that we are talking about this morning, and if you assume causality if there—I am not making that assumption yet, I think that question is clearly open, but the evidence would tend to point in that direction. If you assume that relation maybe we are barking up the wrong tree. Maybe we ought to be first and foremost focusing on Saturday morning and programs that are definitely focused on young kids.

Ms. RYAN. As I mentioned in my statement, with the age of my children, 4 and 6, I don't have any choice but to watch television mornings, and I think I have seen just about every show at least once in the past 4 or 5 years. I cannot say certainly what Doctor Gerbner and his colleagues consider violence in the cartoons because, as I mentioned, he counts any, you know, fist, slap, fist through a plate glass window and he counts that as violence.

Mr. SAUNDERS. We get back to the age-old situation which I tried to bring out. My situation is exactly what is violence? As I said, I think there are obviously facts of violence. We see television Saturday or at 7 o'clock at night or at 10 o'clock at night, we see things that probably all of us here would agree are acts of violence. Then there is such a legitimate gray area of acts or adventure where there is activity or even maybe if you wanted to use the word violence, but does that have to do with what we are discussing here today? I get calls and complaints about a show or situation which is too violent. I ask, the person what specifically is violence to you, and some of the reaction is amazing. Some of the things I would think would be violent, you know, are not violent to other people.

Ms. RYAN. That word doesn't take in everything that might be dangerous to whatever age group you are focusing. I am thinking of Mannix. There have been some shows that there is no blood, there may not be any killing.

Mr. SAUNDERS. I am assuming there are certain terms in discussing violence by the AMA, by the broadcasters, by the press, by Congressmen, we use the word violent and it is a word that comes in so many different types or meanings as to be indefinable, so when someone says they want to keep violence off television, I say specifically, what are you saying, what is your thrust, because there are so many areas.

Mr. WIRTH. What we are concerned about in talking about children, whether it's Saturday morning kids' shows or spacemen or the products that are sold to kids on Saturday morning, it is part of their growing up in society and the kinds of values they learn. A recent piece in the Journal of American Medical Association, dated December 8, 1975, said that 25 percent of television industry profits comes from 7 percent of the programing directed at children. Now that seems like an extraordinary figure to me. That 25 percent of the profit would come from 7 percent of the programing, which is mostly focused on kids. It seems to me that those figures are correct, there is some kind of an overselling going on there or massive suggestion, some kind of very great exploitation of a relatively, I guess it was suggested, senseless group of watchers. Any reaction to the notion of what is sold the kids on Saturday morning programs?

Ms. RYAN. I think the NAB, I think, code, that made the change as to who could or could not do the selling—there was a great deal of complaint at that time that livelihoods would be destroyed. This is useful. I was very heartened by a study about a year after that came out from within the industry, they tend to choose between the cartoons and the commercials, and I have seen in my own home this takes place. Then there is a point where they take pride and say that's a commercial, isn't it. This study would indicate that a great number of children can tell the difference and they tend not to believe the commercials. It points out that what we are raising is a group of skeptics.

Mr. SAUNDERS. The figures you mentioned regarding the profitability of kids' programs Saturday morning, I don't know how accurate those figures are, except that I do know that three networks will tell you that the Saturday programing is a money-making operation, probably due to the frequency of the commercials and as you mentioned, the products in the past have been relatively cheap. And as Barbara touched on in her statement that there has been an effort in the last 3 or 4 years to replace a lot of the animated semiviolent characters with live people who get into somewhat more normal situations.

Mr. WIRTH. To return to the—I think that a most significant issue we are talking about here, you as journalists are obviously very aware and concerned about first amendment protections and would you assume that broadcasters should be entitled to full first amendment protection?

Ms. RYAN. I support the fairness doctrine. I just feel that television is so much a one-way media, that there isn't a letter to the editors, it's difficult to make corrections on television. It is such a potent medium, psychologically as well as technologically, that I think we need some legal provisions for rebuttal or balance, or whatever you want to call it in matters of public controversy.

Mr. SAUNDERS. I will go along with that, but I wanted to ask a question of Congressman Wirth. In your comment about television with regard to the first amendment, were you speaking strictly in the area of news coverage, or were you talking about, for example, the producers and the writers and directors who filed suit against the FCC and the networks over the family viewing—time concept and contended that this abridged the first amendment as far as they were concerned in their ability to have a free hand to produce the type of programing they wanted? I don't think you really make a distinction because you are going uphill and this whole thing, of television programing, both from the news point of view and the daily programing is getting more complex as the years go on. Trying to reach out, I think you would be creating more problems if you tried to define one and tried to define another in another direction.

Mr. WIRTH. The last panel of this morning consisting of Jane Hoback and Mr. Ney, focused on the dilemma we face. On the one hand, there is clearly the protection of the first amendment and on the other is the public interest, public response, public ownership of the airways and limited access to the broadcast media, and how do you balance off those two? The recommendations, as I understood this morning, was that the only way we could do that is to do it through the license renewal process. That is the time when the accountability of licensing stations is brought up and it is our responsibility in the Congress to make recommendations to the FCC in terms of what criteria they are going to follow in renewing or not renewing licenses. What kind of thoughts would you have as to what we ought to be doing in that direction?

Both of you appear to agree violence is a major concern and there is a great deal of it on TV. Should we get rid of it, and if so, how?

Mr. SAUNDERS. May I address myself to that question. We talked about the license renewal, which I agree is the way it is set up or the way that the people in the government can show that a radio station or a television station is not performing its duties and they are negligent in performing the public good. However, it has been my impression more than actual knowledge, I say impression because I do not have first hand knowledge of this because I have never sat in a Washington FCC hearing or any of the adjacent hearings that might be going on during renewal.

Mr. WIRTH. They are closed and almost nobody has.

Mr. SAUNDERS. If a station, and I know there have been exceptions in recent stations, if a radio station or a television station was really not fulfilling its obligation, then the bureaucratic redtape of getting this station to lose its license almost makes the public feel that its protests are almost ludicrous? Would you agree on that? There is a feeling that the public felt even a major network, let alone the local television, was not fulfilling its obligation; they feel as though one voice crying in the wilderness would be of little help and their objections would never be followed.

Ms. **Ryan.** I agree with that. I have gotten so many letters saying I really ought to be writing to the station, but I know they won't listen, so I am just telling you, and I have called these people and written back these people and say may I pass your letter on, and I think that we have all heard people at the networks discuss seriously small amount of intense mail or intense reaction. Like any other industry, I don't think they pay a whole lot of attention to sheer numbers. If it happens in an organized manner or something like that, but I'm sure there is agreement that they would like to hear more from the public than they do. I am sometimes surprised with what a small number of letters or telegram mean to them. Part of this difficulty in getting the license renewal process is that an affiliate has to take to a large extent what the network gives them, and that may be an area to look at, is the strength of the affiliate organization vis-a-vis the network because the pressure can be on before the network, the production companies have to know what the station managers around the country want and what they do not want.

Mr. **Wirth.** On the subject of letters, recently the president of a television station told me it was his opinion that if we in the Congress listened to the people writing to them as they did, we would be much more in touch with the world, so I think they do. It certainly impresses us. I might say that all of us have used the opportunity to make recommendations from time to time. I think that you as critics take your responsibility to your readers very seriously.

As Congressman Van Deerlin and myself take our responsibilities to our constituents seriously and we all then have the responsibility to say, "Okay, we are in this position." What would you do if you were a network executive sitting behind a New York City desk dreaming about a better tomorrow, what would you be doing?

Ms. **Ryan.** I would be trying to release the grip of the rating structure on the American networks. Violence does sell, we can't avoid that. Action shows, I should say, sell.

Mr. **Wirth.** The answer to that is if we don't have selling we are not going to have much of a productive station?

Ms. **Ryan.** Profitable station.

Mr. **Wirth.** The next line from that is referring back to the question of profit structure in the industry which is relatively good——

Ms. **Ryan.** Very good. I wish the rest of the world was so lucky. I think it was a total of $2 billion last year.

Mr. **Van Deerlin.** $6 billion this year.

Mr. **Wirth.** In relation to what, was the net or gross?

Mr. **Van Deerlin.** Gross revenue.

Mr. **Wirth.** Perhaps a lower return on investment, as opposed to what is now a very, very high level might induce better programing or less violent programing?

Ms. **Ryan.** It's a free country, and it is a free enterprise—I am just saying that commercial TV is commercial, they have an obligation to their stockholders and their advertisers. As Les Brown made so clear in his very good book, "The Business Behind the Box". Television doesn't entertain audiences, it sells audiences to advertisers.

Mr. **Wirth.** How do you get around that if you are a network?

Ms. **Ryan.** That's why they have ulcers.

Mr. **Saunders.** This is obviously a pie-in-the-sky philosophy. I think that the network level, when you talk about the Press and the network vice president in charge of programing, I think there are some conscientious and intelligent people in those positions, not all of the time, but on occasion and I think if they had their druthers, they would program fewer action shows and make more of an effort to upgrade television programs.

However, they are caught in the middle, because if they don't produce ratings and revenue, their jobs are in jeopardy. I think the only way you are going to see an upgrading of television, the way so many critics want it, is by consensus all three network heads sit down and say this is the year we are not going to be bothered by ratings and that's not going to happen. When one network is up and the other one is down, that president has to go.

Mr. **Van Deerlin.** If that is going to happen, it may be fruitless to ask you what you would do if you were a network executive, sitting high above New York. What would you do if you were a Member of Congress with some responsibility in the area of communication?

Mr. **Saunders.** Since under the system that we have outlined there is a balance of freedom in the communication business, there is subtle pressure that would have to be applied. I think that network people have to recognize that they are in the business where, in addition to making money, and producing ratings, there has got to be quality programing. I believe that on the national level, as far as programing is concerned, I think the networks in the last 5 years have turned out either under pressure or maybe just legitimate creativity, have turned out a series of dramatic, musical, educational, specials that are probably unparalleled in television history. I think efforts are being made in that area. I don't think we can negate the fact that television production in the special area has been upgraded in both quality and quantity.

I think what we are talking about basically here today and I think from—what we are talking about basically in the week-to week and night-to-night programing, the adventure—the type shows which are delineated by the networks since they use the rating system so heavily can point and say, well, all right, ABC schedules a movie with Jason Robards, Colleen Dewhurst, this was a Eugene O'Neill classic, and when it was brought to television it died in the ratings. And from the networks' point of view how many rating disasters can you put up with and still hold your job or hold your position? In a profitmaking organization to produce shows like that is really vicious. I don't think there are any definite answers for lines within the record to the solution of these problems.

Ms. **Ryan.** This is a very delicate area for Les, because of the first amendment, but there is another practical problem than getting a bill passed, assuming that you are a writer and there is free time on a Sunday morning for a public affairs show, I have heard there is a, you know, a marvelous advantage that the broadcasters have because they can say to a Congressman, don't forget that wonderful series in which you talked to the audience about our Constitution.

Mr. **Van Deerlin.** I have had such a Sunday broadcast, and so have others—and they are lucky if their mother watches. We certainly have appreciated this testimony from this absolutely objective source, and are very grateful to you for giving advice on answers that we hope to find.

Thank you both.

Could we have together Mr. Al Perry, president of the Colorado Broadcasters Association; Mr. Robert Hart, general manager of television for station KMGH; Mr. Richard M. Schafbuch, vice president and general manager, LOA-TV; Mr. Robert Innes, vice president-general manager, KWGN of Colorado, Inc., licensee of KWGN-TV; Mr. Alvin G. Flanagan, president, Broadcast Division of Combined Communications Corp.; and Mr. Paul Blue, executive director KRAM-TV, Denver, Colo.?

STATEMENTS OF AL PERRY, PRESIDENT, COLORADO BROADCASTERS ASSOCIATION; ALVIN G. FLANAGAN, PRESIDENT, BROADCAST DIVISION, COMBINED COMMUNICATIONS CORP.; ROBERT JONES, PROGRAM DIRECTOR, ON BEHALF OF ROBERT HART, GENERAL MANAGER, KMGH-TV; RICHARD M. SCHAFBUCH, VICE PRESIDENT AND GENERAL MANAGER, GENERAL ELECTRIC BROADCASTING CO. OF COLORADO, INC.; ROBERT A. INNES, VICE PRESIDENT AND GENERAL MANAGER, WGN, COLORADO, INC., LICENSEE, KWGN-TV; AND PAUL BLUE, EXECUTIVE DIRECTOR, KRMA-TV

Mr. Perry. On behalf of the Colorado Broadcasters Association, comprised of 11 or 100 percent of all of Colorado's television licensees plus 120 of 132 or 91 percent of the States radio licensees, welcome to Denver and Colorado.

Most broadcasters feel that making statements is a more or less useless exercise. In my 28 years as a radio and television broadcaster, I can't recall when comments made at a hearing had an appreciable effect on the outcome of anything. This also applies whenever comments are filed with the FCC. Frankly, most broadcasters are afraid to express themselves because they feel vengeance at license renewal time.

You are asking for statements from the wrong people. The program decisions for the most part are made at the network level and the local licensees most of the time are without adequate funds and/or talent to produce a program of sex and violence, unless it is the coverage of a news story or documentary. And, beyond the network decision making level, are the program producers who are involved in extremely stiff competition in the production of saleable network programs. If the network program executives would refuse to buy programs of sex and violence, then the producers would stop making them for television and make their marketplace the movie exhibitors, who, as you know, are showing films of this type because, for the most part, it takes movies of this type to get people to attend. Therefore, if there must be governmental control—I disagree with this and will address it later—then it should be at the level of the networks and the program producers.

The entire procedure of production and exposure is based upon getting the biggest audience—or ratings—which in turn is translated into the sale of advertising time, which in turn is further translated into employment plus profits for networks and stockholders. From these profits, the networks have the funds with which to produce the documentaries and programs of a type that generally don't attract a large enough audience to warrant a great deal of advertiser support. And, as you probably know, the higher the ratings these shows attract, the higher the price for advertising. Therefore, it becomes an issue of whether or not the Government wants to assume control of broadcasting totally, or control of the networks. And, if not network control, then network regulation. I don't advocate this for a moment. In fact, in the severe competition for an audience, find programing has been developed throughout the history of broadcasting and presented to the audience without charge in amazing quantity, quality and diversity. This outstanding achievement is without parallel in the world and an accomplishment without Government coercion, because of the freedom of broadcasters to innovate in constant competition for an audience.

Government control is difficult enough to keep up with at present. To provide more will prove nothing and drive many broadcasters into other lines of work. It will detract from the audiences who currently watch the mass-appeal-type programing which, as I said, translates into the funding for the production of the cultural programing.

Frequently, one hears this statement used to justify regulatory policies: "It won't hurt the good guys, but we've got to do something to curb the unscrupulous operators." This rationalization is dangerous. Most certainly, all licensees are not virtuous. But neither are all the licensees of the most heavily regulated industries. I doubt there is a positive correlation between purity and Government control. After all the scandals, I wonder if the concentration of power in Government agencies isn't an invitation to corruption and abuse.

Local television station management is cognizant of its obligation to the public and there have been many instances on record of local stations refusing to carry a network program because of its sex and/or violence content. And, I'm positive management will continue this procedure, for one needs to be the recipient of the mail and telephone calls from the audience to know how concerned management is when the audience is displeased.

The question, then, is how much the Government should be permitted to control programing.

The Supreme Court, perhaps, when presented with the proper case, will invalidate all direct attempts at program control as violative of the first amendment. The same reasoning which motivated our founding fathers to protect the print media from governmental control justifies similar protection for the Nation's broadcasters. The concern about "the public owning the airwaves" cannot obscure the increasing urgency of clarifying the first amendment rights of broadcasters as we assume an increasing proportion of the functions once exclusively those of the Nation's print media.

On the question of family viewing—I believe it hasn't been very effective. It has enabled the kids to stay up an hour later. The control must come from the home. Parents must exercise some discipline and not allow their children to watch what they believe is objectionable. However, as my 20-year-old daughter said on this topic, "If it can't be shown on television, you only have to go to a movie to see it."

To sum up: The networks and program producers are the onces who should be involved in these hearings and if Government control is imminent, it should be at that level. However, Government control is unnecessary; we can keep our house in order with self-regulation. Local station management is very cognizant of the poor taste exercised in some network programing and will continue to pre-empt programs they deem to be unsuitable. Broadcasters should be extended first amendment rights. All television receivers have an on-off switch and a channel selector. People should act accordingly as the mood strikes them. Parents should exercise control in allowing children to see what they feel is an "undesireable program."

Last month my wife and 19-year-old son were visiting the San Diego Zoo. On the bus tour there were many young children—much younger than my son. You would think a zoo would be an excellent place for good wholesome family entertainment. As we passed the lions, a male and female lion began to copulate. If that were shown on television, an upset parent would change channels or turn off the set and then telephone or write to the station. But, at the zoo, there was nothing that could be done but be embarrassed. The tour guide, a female of about 25 years of age, however, handled the situation by saying, "Oh, well, that's life."

Mr. VAN DEERLIN. I can't believe that anything like that happened in San Diego. Perhaps that explains why our next witness, Mr. Flanagan, quit San Diego so many years ago and made his way to Denver. I would, in presenting Mr. Flanagan, be unable to avoid the personal reference of saying that no matter how much hell he gives the subcommittee, I remember him gratefully as the man who gave me my first job in television.

STATEMENT OF ALVIN G. FLANAGAN

Mr. FLANAGAN. Thank you, I am noted for recognizing talent.

Honorable Congressmen, on Sunday night, June 27, 1976, a remarkable and valuable event took place on nationwide television. The renowned Bolshoi Bolshoi Ballet presented on CBS Television the musical version of one of the true classics of English literature—Shakespeare's "Romeo and Juliet."

In the last several minutes of this outstanding production, Juleit took poison—presumably killing herself. Townspeople took her body to the graveyard and placed it on top of a crypt. It was there that Romeo found her, apparently cold and lifeless. Then Romeo, too, took poison and fell at Juliet's feet. But, as all who have read the classic know, Juliet revived and discovered Romeo's suicide. Juliet then stabbed herself with Romeo's dagger and fell dying on his body.

The morning after this notable production was shown on television, CBS Morning News carried a story about the growing suicide rate among young adults in this country. The report said the suicide rate for those in the 15 to 25 year age bracket had risen in past months at an incredible rate. In some areas the rate had doubled and in one hospital in Louisville, Ky., the suicides of young adults had risen almost 400 percent this year over last year.

Now comes the question: Did the showing of Shakespeare's tragic Romeo and Juliet contribute to the increase in suicides among young people? An equally important question: Should a group of psychologists determine that there was a sudden increase in the suicide rate following the television showing of Romeo and Juliet, would the Federal Communications Commission be justified in disallowing any further productions of this particular classic or any of the other Shakespearean tragedies? We think this is the central question: Should the FCC or any congressional or governmental body be the dictator of television programing, either as to its content or to its time of release?

Another question to be answered: Just how much influence does television have in a direct or an indirect fashion on the viewer? The advertising of cigarettes on radio and television was banned by Government edict in 1971. In addition, for a period of 2 years, broadcasters were told by FCC that they must broadcast antismoking public service announcements. More people are smoking more cigarettes today than ever before. So it remains very questionable that television can lead the average American viewer to water and make him drink—or commit suicide.

Initially people bought television sets to be entertained. People did not buy television sets to be informed and educated. As television evolved, the three major networks and their local affiliates throughout the country began presenting news in the same time areas each evening. Therefore, if the people of this country choose to watch television in the early evening, in many instances in many towns they are going to watch news because alternative programing is not offered to them. Over the years, therefore, having literally been force-fed news programing, they have made news by television more important than the printed word.

Now that television has become the major medium for news, information, and entertainment, to a great extent it has also become the mirror of our times. Quite understandable, there are some who dislike our times and are looking for someone or something other than themselves to blame. And television seems to be it. Television's major functions are to inform and to entertain. But, through the years more and more people have demanded more from the medium. They demand that it be an educator, a moral standard-bearer, and an uplifter of principles. They demand that it be a reflection only of those qualities which are good and desirable in our society, even though to ignore other facets of our times would be totally dishonest. Today there are those who demand that television assume the responsibility for fulfilling those instructional requirements, especially for the young, which once were provided in generations past by the churches, the schools, and most importantly, by parents.

Television is expected to be all things to all people. But, of course, it cannot be. Television can, and does, inform and educate and entertain; but it cannot be the sole educator, the sole informer, or the sole entertainer in our society. And it cannot blithely ignore those human qualities, including sex and violence, which are as much a part of our world today as they have been for many hundreds of generations past. To some, even the mere three-letter word "sex" is embarrassing and distasteful and should be banned in books and magazines and television. The fact of violence should not be consciously admitted, even in entertainment programs. To others the word "sex" and all its connotations are accepted without qualms, and violence in news and entertainment programs is accepted as a fact of life. Thus the two extremes—and television, in trying to program for the greatest number of people, is caught in the middle.

We believe sincerely that television has a responsibility to the people of our country to maintain quality in its programing; but we also believe sincerely that people have a responsibility to themselves; to voluntarily view or not view, to listen or not to listen, and to read or not to read that which they like or dislike—including Romeo and Juliet.

The only alternative is total censorship. But, then, the question: Who will be the censor?

You have asked for a progress report on the family viewing concept introduced last fall and our local reaction to that concept. In all honesty there has been no local reaction to the family viewing hour. As a television manager and as a television viewer I have not seen a great deal of change in what is being offered. Supposedly, the family viewing hour was designed to clean up television so that mom and dad and all the kids could sit down and watch television as a family unit. Have any of you ever watched "Hollywood Squares" or "Match Game" and listened to the double entendre jokes seen in every city during the family viewing hour? "Adam 12" seen in almost all television cities is described as a crime drama, and it is seen during the family hour.

The family hour in Denver is from 6–8 p.m. each night. From time to time the networks send down the line programs marked mature programing, parental discretion advised. On the east coast and the west coast, family hour is from 7–9 p.m. Do kids in Chicago and Denver really go to bed an hour earlier than they do in Los Angeles or New York? Of course, they don't, but the FCC thinks they do. The family viewing concept is a complete bust and is nothing more than another example of the Government telling private enterprise how to run a business. The Government should have learned from its experience with Amtrak and the Post Office that it knows little about the people's needs or how to serve them.

Mr. **Van Deerlin.** Thank you.

The next gentleman is Mr. Robert Hart.

STATEMENT OF ROBERT HART, PRESENTED BY ROBERT JONES

Mr. **Jones.** My name is Robert Jones and I am the program director. Unfortunately, Bob Hart was not able to attend and asked me to deliver his statement.

"My name is Robert Hart. I am general manager of television station KMGH-TV, which is licensed to McGraw-Hill Broadcasting Co., Inc., I have been general manager of the station for only a week and acting general manager for approximately 3½ months. As you will therefore understand, my direct exposure as a Manager to the problem under discussion today is somewhat limited. I do appreciate the opportunity to appear with this panel today.

"I recognize this subcommittee's concern with the programing questions being considered today. As we all know, this is a difficult subject because individual perceptions of program content differ so greatly. I do think there are a couple of points about which everyone can agree, however.

"First, there is a need to avoid gratuitious sex and violence in program content. By that I mean violent or explicitly sexual material which is included simply for its own sake and which serves no legitimate dramatic purpose. Second, television viewers should be informed in advance when program material is likely to appear which they may find offensive. Third, we must at all times keep in mind that we have viewers of all ages and that program material which may well be appropriate for older viewers may not be appropriate for small children and should therefore not be scheduled at times when they are most likely to be watching.

"How have we been approaching these problems? First, I am pleased to say that our network, CBS, has been very much aware of concerns expressed by television viewers—and by its own affiliates—about excessive violence on television. We have been told that one of CBS' major goals has been to reduce violence in its programing. I am advised that the CBS Office of Social Research recently completed a thirteen week study of prime time television and found that the number of violent incidents in CBS prime time programing had declined by 36 percent compared to last season. Looking to the forthcoming television season, CBS anticipates a further reduction in the incidence of prime time violence. Owing to a greater emphasis on situation comedies rather than action-adventure series, we anticipate further improvement in this area.

"We are KMGH-TV also recognize our responsibility for all of the programing we broadcast. We are notified in advance by CBS with respect to any network programs which may raise questions of taste or acceptability for other reasons. Such programs are sent to us in advance by closed circuit television for our approval. Some decisions are difficult. The recent CBS movie, "Helter Skelter," was a case of that kind. We taped the advance closed-circuit telecast of that program and pre-screened it for our management team as well as for members of the press. After long and hard consideration, we decided to carry it because we felt that the program was an outstanding dramatic production and that the violence it contained was an integral part of the subject matter. I must say, however, that it was not an easy decision for us and the response of our viewers was mixed.

"In addition, whenever program content is questionable, we see to it that our viewers have advance warning, through appropriate announcements broadcast prior to the program in question and intermittently throughout.

"We are also very attentive to the reaction of our local viewers to what we broadcast. We keep a close check on viewer mail and telephone calls and try to respond to all written comments. You may be interested to know that a very small proportion of our viewers response deals with matters such as sex, violence and the family viewing hour. Most of it concerns controversial issues. The largest number of comments we received with respect to any single program in the recent past, for example, concerned an episode in the "Maude" series dealing with abortion. Virtually none of those comments questioned matters of taste in the program. Instead, most viewers took strong positions on one side or the other of the abortion issue itself. In contrast, I am advised by our program director that he had received a total of perhaps six letters over the past year concerning the whole family viewing hour concept. There does not appear to be much reaction to the family viewing hour in our area, one way or the other.

"Finally, I would like to emphasize the total service provided by our station and particularly the programing we broadcast for children. In addition to the CBS "Captain Kangaroo" series which is broadcast for an hour each weekday directed primarily to pre-schoolers. The program features a hostess who stresses instructional projects such as arts and crafts in addition to providing entertainment material. Each year, our station broadcasts the Colorado-Wyoming spelling bee. Each week we carry the McGraw-Hill syndicated program series, "Words-a-Poppin'," an instructional word game program featuring school age contestants. And next month, we will present a special one-hour, local production of the children's classic, "Sleeping Beauty," in cooperation with Theater Under Glass, a Denver theater group. In addition to "Captain Kangaroo," the CBS television network originates a substantial amount of very worthwhile children's programing, such as the Children's Film Festival series, the "In The News" features broadcast each Saturday morning, and many other specials throughout the year. In sum, there is no absence of wholesome family viewing available on KMGH-TV.

"Let me again thank this subcommittee for the opportunity to appear."

Mr. VAN DEERLIN. The next in order will be Mr. Schafbuch.

STATEMENT OF RICHARD M. SCHAFBUCH

Mr. SCHAFBUCH. Thank you.

Mr. Chairman and Congressman Wirth, My name is Richard M. Schafbuch. I am vice president and general manager of General Electric Broadcasting Company of Colorado, Inc., licensee of stations KOA, KOAQ (FM) and KOA-TV, Denver. My association with the KOA stations dates back to 1960, and I have been general manager of KOA-TV since 1974. I am a native of Denver.

Station KOA-TV, channel 4, commenced operation in 1953. The present licensee acquired the station in 1968. Since KOA-TV went on the air, it has been affiliated with the NBC Television Network. We are proud of this long association with NBC.

The subject of these hearings—violence and sex on television—is a concern to many Americans. Television is a powerful force in our society, and how it treats such sensitive subjects is a matter which no responsible broadcaster should ignore. Our industry is subject to continuing public scrutiny on this subject, and we think rightly so.

At the same time, there are no quick and easy answers. While there are studies suggesting that the portrayal of violence on television may motivate anti-social behavior, violence in drama dates at least to the classical period. Moreover, not all violence on television appears in dramatic situations. The violence of Vietnam a few years ago, and of Lebanon within recent days, is a fact of life from which we cannot hide. And the history of our own Nation—celebrating its 200th birthday this very week—has had more than a few violent chapters.

Similar comments can be made about television's handling of mature themes. While some programs offend the sensitivities of some viewers, the fact remains that there are many aspects of life which, however unpleasant to some, cannot, and should not, be ignored.

I make these observations not to excuse the presence of excessive or gratuitous violence or sex on television, but to call attention to the broadcaster's dilemma. On the one hand, television is a guest in the home and should respect that privilege. On the other, television has a responsibility in our news and other programing to tell it like it is, and in our entertainment programing to treat mature subjects of interest and concern to a significant part of our audience.

At KOA-TV, we have specific program policies designed to deal with this dilemma. First, it is our overall programing objective to offer a well-balanced program schedule of the highest quality, responsive to the interests and needs of the public we serve. Within that context, we endeavor to insure that all program material is conceived and presented in good taste, and is suitable for home reception and family exposure. The presentation of obscene, indecent or profane matter is, of course, prohibited.

One of the most effective controls which we have with respect to the presentation of violence and sex on television is scheduling. At KOA-TV we endeavor not to present programing which would be unsuitable for children at times when there are significant numbers of children in the viewing audience. This applies to both our locally originated programing and to our NBC network programing.

Second, station KOA-TV is a member of the National Association of Broadcasters and subscribes to its television code. The code sets industry-wide standards for programing, including matters relating to violence and sex. Commencing with the fall 1975 television season, the code adopted what is popularly known as the family viewing policy. This policy assures that the first 2 hours of prime time programing are suitable for viewing by all members of the family. It also involves the use of audience advisories when, from time to time, programs are presented which might be considered by some viewers to be offensive.

We have now seen the family viewing concept in operation for approximately 1 year. On the whole, we think it has been effective and well received. However, there are still some problems with this policy, such as whether it is adequate for the central and mountain time zones, where prime time begins at 6 p.m. rather than 7 p.m., and whether there is sufficent restraint in the use of violence and sex after the family viewing hours. As more experience is gained, we expect that better answers to these problems will be found.

While the family viewing policy is not a cure-all, its great value lies in the fact that parents are now assured that prior to a certain hour in the evening television programs will be suitable for children to watch. This means that parents who wish to supervise their children's television viewing can do so.

The problem of insuring that programing is suitable and in good taste, and does not contain excessive or gratuitous violence or sex, is one which the local station and its network share. Insofar as locally originated programs are concerned, the station must assume full responsibility. At KOA-TV, our schedule of locally originated programs includes no programs which might be considered as having significant violence prior to 11:30 p.m.

In the case of network programs, we are necessarily dependent in part upon the efforts of the network. However, we are advised of the content of programs prior to broadcast and, at our request, have the opportunity to prescreen them. We have continuing contact with the network and ample opportunity to make our views known—through affiliate meetings, our affiliate organization, aad day-to-day contacts. And, of course, we have the right to reject a network program which we consider unsuitable. Fortunately, over the years, KOA-TV has received relatively few viewer complaints about the suitability of our network programing.

Finally, although my comments have been directed primarily to programing, they are also applicable to advertising. KOA-TV has strict standards concerning the suitability of advertising, as does the NAB Television Code.

The problem of violence or sex in advertising frequently arises in the case of theaters advertising current motion pictures. At KOA-TV we have adopted a policy under which we will not accept any advertising for X-rated pictures. In the case of R-rated pictures, we will only schedule such advertising at 10:30 p.m. or later, and we impose strict standards with respect to the content of such advertising to insure that it is in good taste and not offensive.

In conclusion, this committee can be assured that Station KOA-TV, like many other broadcasters, is concerned with the problem of violence and sex on television and is pursuing meaningful policies designed to insure that the portrayal of these subjects is restrained, in good taste, and otherwise consistent with the public interest. It is not an easy task, because conflicting values are involved. We appreciate the contribution which public hearings such as these can make toward a better overall understanding of these issues.

Thank you.

Mr. VAN DEERLIN. Thank you very much, Mr. Schafbuch.

Next, Mr. Robert A. Innes, vice president and general manager, KWGN, Denver.

STATEMENT OF ROBERT A. INNES

Mr. INNES. My name is Robert A. Innes.

Since the Subcommittee on Communications is conducting a hearing in Denver on the question of sex and violence on television and has invited me to appear to testify as a representative of KWGN-TV, the only non-network affiliated television station in the State of Colorado, I thought it would be useful if I briefly outlined the programing and practices of KWGN-TV from the vantage point of an independent television station.

As an independent or a non-network affiliated station, KWGN-TV purchases or produces virtually all of its programing. The only exceptions are occasional national sports and special events from independent sources. The principal programing goal of KWGN-TV is to provide a diversity of program events that will appeal to—and in many instances—serve all of the varied needs and interests of the total community.

Almost all of our day-to-day programing is family-oriented, including such situation comedies as I Love Lucy, Andy Griffith, Father Knows Best, and Dick Van Dyke; movies and family entertainment in prime time and on weekends; and adventure hours such as Bonanza and Ironside during the late viewing periods.

Other major programing efforts are designed for children and general family viewing. Five days a week, we program and produce "Blinky's Fun Club," which is hosted by a lovable and friendly clown who for the past 10 years has presented, together with entertainment elements, program material that instruct children on such topics as safety, health matters, and fire hazards. We also present general family programs, including McHale's Navy, Bewitched and Gilligan's Island, and such educational programs as Big Blue Marbles and Friends of Man. In addition, we will be presenting such popular revivals as Lassie, The Mickey Mouse Club and the new production of Howdy Doody.

Another major effort of KWGN-TV is sports, with coverage of local (now NBA) Denver Nuggets basketball, Colorado State High School basketball championships, NHL hockey playoffs, rodeos, football bowl games, college basketball, horse races, golf. We either originate these sports programs or obtain them via special national sports networks.

Another highly important programing area is community and Public Affairs programing. Five days a week, we produce a community-involvement program, "Denver Now," which features a multitude of subjects that are of interest—or have a special impact on—Denver and the Rocky Mountain region. We also produce five other weekly half-hour programs that address themselves directly to political, religious, educational, economic, and ethnic concerns. Additionally, we produce various half-hour and 1-hour prime time specials which focus on particular problems of the area. Last year we won a national (NATPE) award for our efforts regarding problems of the aged.

Another extensive and vital area is our news coverage. We program 35 news programs a week—of various lengths—which stress local and regional items but also use the national news services available to us.

As a protection against objectionable material being included in our programing, we screen our product before it goes on the air to determine the degree of violence, sex, and simply bad taste that may have escaped the Production companies' editors. We have rarely received objections based on sex and violence in regard to our entertainment programing.

Mr. **Van Deerlin**. Thank you.

Next, we will hear from Paul Blue, executive director of KRMA-TV, Denver.

STATEMENT OF PAUL BLUE

Mr. **Blue**. Mr. Chairman, Congressman Wirth, my name is Paul Blue. I am the executive director of KRMA, channel 6, the public station in Denver.

Public television is a unique broadcasting system. Inasmuch as it is a noncommercial medium and draws on public funds, it has special obligations, responsibilities, and opportunities in its efforts to reach all segments of the American public. Public television has been called an experiment in decentralized program decisionmaking. Well over 200 public television stations across the country make up the Public Broadcasting Service. As members of this system, the stations help administer policies and produce the bulk of the programs carried. All of the entities interact with each other concerning the production of programs, the purchasing of programs and the scheduling of programs.

As part of this interconnected system, and as executive director of KRMA, the public television station in Denver, I view as part of my responsibilities the development of a well-rounded program schedule for our viewers. This includes local as well as national programs. Unlike commercial television, we need not strive for massive audience awareness and interest. My staff and I must develop and maintain a high standard of diversity and excellence, at the same time recognizing the wide variety of audience interests and tastes. These needs, interests, and tastes are ever changing. Many of these programs, by the very nature of their specialized content, will not always appeal to the total available viewing audience.

When any of these programs raise concern in the areas of content and taste, for example adult themes, the individual licensee is responsible for the decisions concerning that program. When it is felt by PBS that a program might contain questionable material, the stations are generally alerted in advance and the program prefed to the stations for advance viewing. At KRMA–TV we preview all such material. A number of options are available; the possible decision not to carry the program; or to schedule it at a time more suitable for its intended audience; or to insert viewer advisories as to nature and content.

In June of 1972 the Public Broadcasting Service published statements of policy on program standards and a document of journalism standards and guidelines. PBS stations and a number of other professional voices gave input to this process. These documents reflect certain philosophies to which I subscribe. Rather than adopting a formal code as the answer to the standards problem, PBS described a framework or process through which the Public Boradcasting Service, the producing agencies, and member stations could interrelate. There are seven major guidelines listed:

One: Primary responsibility for the content of programing distributed by PBS rests with the producing agency.

Two: In those areas of content likely to create problems, PBS and the producing agency should cooperate to minimize the problem and to assure the quality of programing to be distributed.

Three: Public broadcasting has a responsibility for strict adherence to the criteria of the Communications Act and the Public Broadcasting Act for fairness in the treatment of controversial issues and to the highest standards of journalistic integrity.

Four: Producing agencies must avoid the inclusion in programs of material which is of questionable taste and which is not required by the valid purpose of the program.

Five: PBS reaffirms its recognition that individual taste and levels of tolerance vary and that it must provide service to that spectrum of audiences.

This particular policy goes on to state that PBS must construct its national schedule to serve the many audiences of public television, including those which the Carnegie Commission referred to as "those that may otherwise be unheard." It must not become entangled in attempts only to gain large instantaneous audiences; yet it must offer programs to increase total audience awareness and interest in the medium. In developing its schedule, PBS must constantly consider the diverse nature of the audiences of its various stations. It must play its role in full cognizance of the difficulty of seeking single or simple answers to questions of taste.

Varieties in taste and differences in perception must never become an excuse to include unnecessarily questionable material. Recognition of the open nature of the television audience must be exercised by the producer, just as a proper regard for the probably composition of the audience should dictate the times of scheduling by PBS or the stations of material dealing with adult or controversial themes.

Six: In dealing with controversial issue of taste, the producing agency must be aware of the variations in community standards and tolerances, and make every effort to eliminate loss of carriage of programing of value by stations which may find parts unsuitable to their communities.

Seven: Framing by means of notification of adult content may be done as deemed desirable either by the producing agency or by the local station, if it so chooses after reviewing program information and content.

In effect, this means that KRMA, and I am sure most public television stations, tries to schedule programs with adult content or themes after 9 p.m. local time, when the public television viewers are made up of those who can make mature judgments about viewing preferences. The intent of this scheduling practice is to avoid the carriage of programs felt to be inappropriate for children in the early evening hours.

Questions of content and taste include a broad range of elements, such as language, sexual references and violence for the sake of violence. Consideration should be given to all of these matters as they relate to carriage and scheduling. I subscribe to the notion that TV is a family medium, and should present material which the family viewing at home is comfortable. But, at the same time, we have an obligation to educate, inform and bring an awareness of cultural diversity and to reflect society to itself. All of these matters require a balance, which is what we try to achieve at KRMA.

Mr. **VAN DEERLIN**. I think we cut a pretty wide spectrum of viewpoints and some quite feisty ones. Despite the assertion of your Colorado association president that you are all fearful people, afraid to express yourselves because you feel there will be vengeance at license renewal time, we have 11 TV licenses in Colorado and 132 radio station licenses. How many instances have we had in Colorado where licenses have not been renewed for one reason or another?

Mr. **PERRY**. I am not aware of any, Mr. Van Deerlin. They have all been renewed.

Mr. **VAN DEERLIN**. That adds up to 143, and you have never had a license lost in Colorado. Yet these broadcasters are fearful of expressing themselves.

Mr. Perry. There was one that was an AM station, a daytime station in Golden that was lost. It is still off the air. It has never been reopened.

Mr. Van Deerlin. What was the problem?

Mr. Perry. Dishonesty involved with the operator.

Mr. Van Deerlin. It wasn't because he spoke up at a hearing of a congressional committee?

Mr. Perry. No, sir.

Mr. Van Deerlin. Well, I am a little sensitive to that kind of statement. The FCC, if it has erred, has certainly not erred by rejecting too many license renewals in my opinion. I cannot believe that there is any concern on the part of any of you substantial leaders of your community—any justified feeling that a congressional committee with some responsibility under the Communications Act, in seeking information, imposes a reign of terror upon you. Would you not agree in retrospect, Mr. Perry, that perhaps you used a little license in including that line in your testimony?

Mr. Perry. Yes, sir.

Mr. Van Deerlin. You know, broadcasting is a pretty good business. A lot of people are doing quite well in it, and also performing some superb service. I know Senator Pastore has barked a few times, but I don't think anyone really is afraid of even Senator Pastore, except maybe some of his staff. You acknowledged, Mr. Perry, that program decisions—the programs that we are talking about—are really made at the network level, and local stations are hardly more than a conduit for these programs. Do you see any inconsistency in the law which, in effect, makes the licensee—the broadcaster himself, the owner of the station—responsible for everything that goes out on his air?

Mr. Perry. No, sir. I don't see any inconsistency, but if there is Government intervention that is going to be stepping in and taking over, then perhaps the networks ought to be governed.

Mr. Van Deerlin. Of course networks are not licensed except as the owner of licenses in their television outlets. Many of you referred to the opportunity that you have, as affiliate managers, to view in advance the offerings that are going to be coming down the line from the network, if you make that request. What's involved here? Is this a cost factor to do this, or is it pretty much a matter of having somebody available—sufficiently close to management—whose judgment would be trusted in looking at these matters in advance and deciding whether or not you want to take them?

Mr. Schafbuch. There is no expense involved. In our particular station, the review committee consists of myself and the manager of marketing for our TV station, and it is a matter of being available to view the program, to have it taped, and then view it.

Mr. Van Deerlin. How often is this option exercised in normal times? If you knew something like "The Selling of the Pentagon" was going to be shown, and you heard some advance rumbles about controversy, you might ask to see it in advance. How often, normally, do you see in advance what's coming from the network?

Mr. Schafbuch. Strictly on sex and violence, the last specific example I could give would be the Born Free, in October of 1975. We view many programs in advance but not to the point of sex and violence. That one with the network advisors and the trade press coverage indicated that was very definitely a program that should be prescreened. Very seldom.

Mr. VAN DEERLIN. But it is not something that's done as often as once a week?

Mr. SCHAFBUCH. No, sir.

Mr. VAN DEERLIN. Mr. Flanagan, if I may call you that, you refer to television as having become a mirror of our times. Do you really think that this endless succession of half-hour offerings with all the sex and beatings and violence—can you really say this mirrors our times? Is this the kind of country we live in?

Mr. FLANAGAN. I didn't specifically say that as a half hour program which mirrors the time. The inference was, and I meant for you to understand what I said, that television generally from sign-on to sign-off mirrors our times.

Mr. VAN DEERLIN. Well, yes, but specifically in the question of the family viewing hour, I would tend to agree with you—that it was something the networks probably would not all have done themselves within the space of 10 days.

Mr. FLANAGAN. Undoubtedly, pressure came from Congress down to—if you go down to Chairman Wiley to accomplish something in that area and I don't know how great the accomplishment was, if any.

Mr. VAN DEERLIN. Well, you obviously don't think much of it. Do you think it should be abandoned tomorrow?

Mr. FLANAGAN. No, I didn't say that. I believe in the family hour concept.

Mr. VAN DEERLIN. You do?

Mr. FLANAGAN. Well, just because it is a failure doesn't mean it shouldn't be continued by a continued effort to improve what is being offered.

Mr. VAN DEERLIN. I am totally ignorant in the matter; what would be the cost factor of programing for each time zone at the same time so that 9 o'clock in New York is 9 o'clock in the central zone and in Denver?

Mr. FLANAGAN. I don't know that there would be a large cost factor. I think that the networks and the local stations have become imbedded in the idea that we have early news in early time which in general terms runs from 5 to 6:30. In our late news here in Denver is at 10. Now in Los Angeles the late news is at 11 and the early news there is a very important factor from a financial statement. And also from the habits which people now live by, which to a large extent have been dictated by broadcasting because people make it a point in many instances to be home to see the early news. In New York and in Los Angeles, the 11 o'clock news is not anywhere as important as the early news is in Chicago and Denver. Now there have been discussions in affiliated board meetings of should we make the switch and make all the country the same. Well, I don't know that the people in New York and Los Angeles would agree that they could do just as well as the people in Chicago and Denver who have their emphasis on the early fringe as compared to the late fringe. I don't believe there would be a cost factor involved. I think it would be merely a matter of causing people to think and act differently.

Mr. Van Deerlin. Is it possible that the early evening news is earlier in the evening here in Denver because the network feeds?

Mr. Flanagan. No, because in Los Angeles the news time will come on at 5 o'clock but it will be extended Sunday on KNX and the people in Los Angeles have a 2-hour news block, basically because their network doesn't start until 8 o'clock, so rather than to use syndicated programs they use that additional time in the way of news. Now I don't believe there would be any additional cost in having the whole country on the same time zone.

Mr. Van Deerlin. Because it really seems to me if family viewing falls at the same time in almost half the country and is treated differently to the extent of——

Mr. Flanagan. I think that's a part of the problem, because even when you have family viewing and you want to separate the four time zones, I don't believe there is too much programing, I don't believe there is sufficient programing available to fulfill what in my mind is something that could be viewed by the whole family unless you want to confine yourself to wild animals and things of that nature.

Mr. Van Deerlin. Obviously, I can't take that chance. Mr. Wirth?

Mr. Wirth. We are interested in the variety of reactions of the panel on the family viewing hour. Mr. Perry said that it hasn't been very effective and was a failure, and Mr. Schafbuch I gather you thought on KOA it was pretty good? I was wondering how CBS found the family viewing?

Mr. Jones. I hesitate to speak for the network, but in the case of KMGH I think the statement about the scarcity of mail, there has been no reaction, phone calls, four or five received over 2 years.

Mr. Wirth. What do you think about it?

Mr. Jones. I personally think it has been a failure and I would like to see it discontinued.

I think it has been unsuccessful in every respect.

Mr. Innes. Our programing is basically family programing anyway, all the way through, and that's what we sponsor on our station. I couldn't comment on whether it has been effective or a failure for the network stations. I know we don't get any complaints about our failure. I am surprised the networks don't get any reaction one way or the other.

Mr. Wirth. Mr. Flanagan, following up on your remarks, you believe in the concept. What do you mean that there ought to be changes made?

Mr. Flanagan. No; I don't think there should be changes made until we see if there has been a policy which I don't think there has been. I don't believe that anybody outlined this type of program which would be acceptable in the family viewing hour. I don't believe there has been a definition written for that, either from the standpoint of the producers or from the standpoint of the FCC. However, if there were a sufficient programing of the kind that I think that most people would believe would fit in that area, I see no reason why the family viewing hour couldn't be made not only successful as far as the viewers are concerned, but successful from a commercial standpoint.

Mr. Wirth. I gather Mr. Schafbuch——

Mr. Schafbuch. I think one reason that the family viewing concept has not been successful is because of the late date that it was instituted for the 1975 season. I think the programing developing at the network level was so far down the line that the people have found it very difficult for the family viewing hours to be totally proved right or wrong last year during its first season.

Mr. Wirth. Former Chairman Macdonald said that in his opinion family viewing, the family viewing concept was really a public relations gimmick. Do you agree with that?

Mr. Flanagan. I suppose it could be called a gimmick inasmuch as I would, from the little I know about what's happening in Washington, that there were pressures brought on Wiley to do something about sex and violence in the early evening hours and so within probably a week's time, the concept was not only originated but put into effect, and I don't believe that anything that involves a magnitude of ideas and dollars can be conceived and become effective in the very short time that the networks were coerced into offering what was supposed to be family viewing.

Mr. Wirth. The networks presumably had already coerced themselves through the NAB code while reading from special program standards. This was in effect for all of the stations prior to family viewing and part of the code, as I understand it, accepted by every member of the NAB was one, that violence, physical or psychological be rejected, and not used as explosive programing involving violence to victims and perpetrators, and that presentation of detailed description should be avoided. And when presented in programs designed for children violence should be handled with sensitivity.

Mr. Flanagan. That's true. However, when the type of programing that is necessary for a station to use, to attract audiences in prime time is limited to the extent of what is available to you, that comes from the program producers and from the networks themselves, sometimes those words can be stretched to have a meaning that will allow that program to qualify because on a number of occasions I have sat with standards and practices types of people in the network and I have registered objections to some of the programs, and I will give you an example. Hotel Baltimore and I canceled it on all seven stations because it was sold to us as a slice of Americana and the lead characters in it were two whores, two queers, a pimp, and other objectionable people.

Mr. Van Deerlin. Mirroring American life.

Mr. Flanagan. I don't deny there are whores and pimps in some hotels and it happened to be that hotel which was a mirror of that particular segment, but I don't think it was a slice of Americana, but nevertheless, I can't deny that it isn't a reflection of some people, but it didn't occur to me that this was a program that I would like to have on our station or on our stations, and as a consequence I canceled it. Now the outcome of the cancellation was I will venture to say, well over 1,000 phone calls pro and well over 1,000 phone calls con and they were equally bitter because, and in letters and to sum up what those were against the cancellation, they said for one reason, who the hell are you to censor what I am going to see. I am perfectly capable of making that judgment and I would like to have that right reserved to me and the other side of the coin on the phone calls and the letters as well were just delighted that you took the burden upon yourself to get that terrible program off the air so you are damned if you do and you are damned if you don't by the two different widely divergent views, and I would suggest that maybe a very small slice of Americana on either end with the large group in between who didn't give a damn one way or the other.

Mr. WIRTH. Clearly, something happened between the time that the NAB had the standard and the promulgation of the family viewing. What was that, what occurred that got Mr. Wiley together in a room apparently with three network people and they brewed up the family broadcastings concept. What was going on to cause the furor?

Mr. FLANAGAN. I think the words that you read there were loosely interpreted.

Mr. WIRTH. Which means what?

Mr. FLANAGAN. Which means that probably in the opinion of several members of Congress and the opinion of Mr. Wiley that the code, I don't think that they were referring to the code, but in their opinion and in their homes they didn't see and their constituents also let them know that they didn't believe that the type of program that was being offered at that time was free enough of sex and violence.

Mr. WIRTH. So your general position would be, if I understand it, Mr. Flanagan, that neither the NAB——

Mr. FLANAGAN. I didn't say that, I think they are ineffective. I am not saying that they are not necessary.

Mr. WIRTH. How are they made effective?

Mr. FLANAGAN. I don't know.

Mr. WIRTH. Is that your self-policing responsibility or the networks' or the FCC or the Congress?

Mr. FLANAGAN. Well, it would be nice to say we could police ourselves but we are not in sufficient control of our own program destiny to say that we can police ourselves because, not with a great deal of frequency, but from time to time programs will come down the line and we could preview, and I suspect that we get 99 percent of the programs before they go on the air, but frequently because of arguments between the producers and the network, they cannot agree on the content of the program and programs will come down as late as 9 o'clock that morning that you are supposed to air that night at 7 and the program advisor is—you don't really know what to do. Should we not show the program even though the program advisor saw it? You cannot program information sufficiently far ahead to cover the 2-week deadline for the newspapers or the TV Guide. It is not practical, because programs are not produced that far ahead. When it comes down the line and the advisor is there, is it sufficient for the advisor to tell the parent not to expose their children to this program or at least to use their discretion? I don't know the answer to that.

Mr. WIRTH. I would gather that you are saying that the locals are relatively powerless?

Mr. FLANAGAN. I don't think they are powerless, I think they can cancel.

Mr. WIRTH. Unless you change lead time so you couldn't get the time?

Mr. Flanagan. Well, the motivation of a half hour fill is on the shelf some place, but with the advisor there have we taken sufficient steps, has sufficient warning been given and in many cases, we have not only shown the advisory, but taken a spot before this and said so, so that the program won't even be titled.

Mr. Wirth. So policing is possible at the local level, but you are also suggesting that a lot of that should be at the network level, producer and network level, is that right?

Mr. Flanagan. Well, I don't know that policing is the correct word.

Mr. Wirth. It was your word.

Mr. Flanagan. Possibly an educational program of some kind should take place.

Mr. Wirth. Just going back to the laxity in the application of the NAB standards, then we went to family viewing where I think your words were should policing occur. It seems to me we have a number of choices, the Congress, the FCC, the network and producers, local stations. I am sure there are probably other choices where you could be assured that the guidelines agreed to by all of you are in fact met and are not loosely interpreted. I am trying to get to where that occurs, who has the responsibility?

Mr. Flanagan. The responsibility for the production or the showing?

Mr. Wirth. If you agree with the guidelines in the television code put out by the NAB, you would agree that you are going to adhere to those guidelines, who has the responsibility for assuring that is done?

Mr. Flanagan. The licensee, there is no doubt about that.

Mr. Wirth. So it is at the local level that you have that responsibility?

Mr. Flanagan. We are the ones who are charged with it.

Mr. Van Deerlin. How complicated are the financial arrangements, the bookkeeping with the network if and when you decide not to take a program?

Mr. Flanagan. Oh, it is a minimal loss for that half hour or that hour and you send in at the end of the month and say you did not play it, and they deduct it.

Mr. Van Deerlin. I presume it has something to do with their billing of advertisers?

Mr. Flanagan. That's their loss, but it doesn't represent that large a loss to the local stations.

Mr. Van Deerlin. And of course you may have local sponsors that have been sold before a popular program or immediately following a popular program which would then have to——

Mr. Flanagan. I don't necessarily say adjacency to programs. Most of the time you sell time periods and——

Mr. Van Deerlin. So the bookkeeping is not going to be——

Mr. Flanagan. It is not a factor.

Mr. Wirth. It seems to me that we are saying that you are in a way between a rock and a hard place. You are the people who have to go back to your license renewal and on the other hand it is programers and the network that are sending you a great deal of the material that you air and they are not subject to it.

Mr. Flanagan. When that program is offered and probably accepted by a broadcaster, by over 200 stations you find some comfort in numbers also. By that I mean I don't believe that 200 stations would have their licenses revoked for playing a particular program or showing a particular network program that was found less than tasteful.

Mr. WIRTH. Which would suggest that perhaps there ought to be some way of monitoring the networks or doing——

Mr. FLANAGAN. I think it would have to start long before we put it on a project in New York and send it down to us.

Mr. WIRTH. How does tht work?

Mr. FLANAGAN. That doesn't work, because again you have too many cooks in the kitchen.

Mr. WIRTH. How should that work?

Mr. FLANAGAN. I don't know, to tell you the truth. This is a problem that has become more evident since the family hour has begun and even more so since sex and violence has become a subject of conversation. When you have a producer who says to the network this is the way the show is going to go, you don't like it that's all right too, and they refuse to accept any limitations on their creatability, there is a real problem that the networks are confronted with, and I have the problem in Los Angeles as far as Norman Lear is concerned. He has said this is the way it is going to be, you see what you get and you either take it or you don't get it, so I don't know, it is a triangle, and I don't know where the rat race stops.

Mr. WIRTH. Let me carry this to the next step. We have heard a great deal about the Surgeon General's report and the subsequent discussions of all that evidence which, despite a lot of contrary opinion, seems to be moving in the direction that there is some correlation between violence on television and violent behavior or attitudes among the citizenry. That seems to be also affected by the study and it seems to be reflected in the analyses done by the American Medical Association just recently which we referred to a number of times today. There would appear to be a lot of evidence that there is this causal relationship. Were it to be established for sure that violence on television does cause violent behavior in individuals in this society, particularly children, what would be the responsibility and what level can do something about that, allow the programers to go ahead?

Mr. FLANAGAN. I think that we are now assuming that the Surgeon General's report is correct.

Mr. WIRTH. I am making that assumption. What if that were the case, if the mash of the evidence would seem to be going in that direction? If you follow the curve out 15 years ago there was no evidence and now there is evidence which maybe 5 years from now will be very, very conclusive evidence that in fact a child watching television is very susceptible to violent behavior and their social relations and so, were that to be conclusively proved, and there was general agreement that the evidence was there, then what is the responsibility of home?

Mr. FLANAGAN. I would leave that to Mr. Schafbuch.

Mr. WIRTH. If that's the assumption.

Mr. SCHAFBUCH. It is just common sense, number one, stations wouldn't program that type of programing because it is not responsible broadcasting and producers wouldn't produce it, directors wouldn't direct it, and writers wouldn't write it. There wouldn't be that product available to program. I don't think any responsible broadcaster would be crazy enough to broadcast programs of that nature if in fact, your assumptions were correct in this hypothetical case.

Mr. WIRTH. I am not sure for example, the writers and the producers would agree with you.

Mr. SCHAFBUCH. They have to sell their product to somebody. I can't see a writer or producer selling a product that no one would buy. There would be no market for their product.

Mr. INNES. That's in existence now in a syndicated program where there is more violence and some of the syndicated programs they will show you an episode and so you say, we'll cut that out, and it is up to the station to decide, you know, if it is cut at all, if you want that product. Where are you going to run that product. There haven't been steps in that direction, it is moving that way.

Mr. JONES. I was going through the history of drama and all other entertainment forms and there have been times when they have been viewed to be harmful on either political, moral, or religious grounds and generally the pattern has been the ultimate backstop of the individual himself in the case of a minor or just the parent, and I'm not sure there are many people in the American society that are willing to forgo that level of decision on what is harmful and what is not harmful. I think many parents want to retain control and most individuals want to retain control for judging for themselves as to what they are going to watch.

Mr. WIRTH. You would disagree with Mr. Schafbuch's statement that people——

Mr. JONES. We are in a hypothetical area, which in itself makes the answer difficult. You have assumed something that by no means has to be proven and there is no guarantee it will be, but again I think historically it can be shown that most people have still wanted to retain the right of judgment over the course of their lives and over the impacts and information and also the entertainment.

Mr. WIRTH. Again going back, I think that we are not making any sense looking at the evidence that has been collected. We are not making a terribly great jump. The evidence seems to be preceding in the direction of correlation between violence in the media and behavior of individuals and the impact on children. There seems to be a mounting effort and as we move along in this direction, and we get to the point where maybe the evidence becomes more formidable, we are going to have to start thinking about who has that responsibility, whether we leave that in the marketplace or make the assumption that the airwaves are a terribly important public product. It was brought out by witnesses here in relation to the first amendment and I just think that seeing an outfit like the AMA making a policy statement that it made last week is pretty strong evidence, from an organization that is certainly not known as flaky or radical or oriented toward the social sciences.

Mr. FLANAGAN. May I offer a different judgment?

Judge Gilliam, who for many years was a noted judge working with juveniles, unfortunately he is no longer with us, but he placed the blame for the problems of the youth today on the automobile, and he said it is my mind after sitting on this bench for *x* number of years, the automobile is the cause of it all or largely responsible because it makes a person unaccountable and they have to have money in order to have this automobile and he said I can't tell you how many hours I sat with him and watched cases where the automobile was involved; and in my experience of doing ascertainments around the country for several stations, I talked with the head of Catholic schools in New York and his offices are right behind St. Patrick's on Madison Avenue, and the pressure of earning a living, it is the pressure caused by keeping up with the Joneses where the father has to maintain, or the mother has to work in addition to the father working, and no longer is the family unit able to control itself. Other notables in this field say it comes from the school or from the nasty, dirty, lousy neighborhood that the kid lives in or from the home itself. I cannot buy, as you have suggested, that there is a growing amount of violence brought along by television programing. It may have, in the opinion of some, made a contribution to violence, but in the opinion of a number of learned people, it is not television.

Mr. WIRTH. It is clear there is a difference of opinion and evidence about where that causality may occur. The point I am making, when you see different research groups, as diverse as the Surgeon General and the AMA coming to the general conclusion that it is happening with increased rapidity, we should be concerned about this. The question then is who does what about it, and does self-policing do that kind of a job, or does the responsibility fit someplace else?

Mr. VAN DEERLIN. Any of the panelists have anything they would like to add on the subject?

Mr. INNES. We as broadcasters, we do put a great deal of weight on comments we get from the viewers, and it does not go untreated. I would like to emphasize that point.

Mr. WIRTH. I think, Mr. Innes, that the Members of Congress have it. One of the reasons for the intense discussion of violence and obscenity on television was the fact of input from the public to the FCC on the subject of violence, which increased from 2,000 to 25,000 letters in a short period of time showing a marked increase and clearly reflecting that something was going on. There were reactions to what people were seeing on television. I think we are both very much in the same situation in being sensitive to what the people are saying.

Mr. SCHAFBUCH. It might be good for us to exchange mail with you. Maybe you can forward what you get in those comments.

Mr. WIRTH. Would you answer a lot of that mail? I think it would be great.

Mr. SCHAFBUCH. I think the broadcasters have this market in this country and very much aware of what the audiences feel. This has not become a big problem yet. I would be interested in the mail that you do receive in Congress relative to the subject, and I would like to exchange our views.

Mr. WIRTH. We all have very much a mutual agenda, as we have been talking about yesterday, and today, the sensitivity to the fact that there is a very great responsibility that you all hold with these licenses and we do have a concern which is a common concern.

I thank you all for being here today.

Mr. VAN DEERLIN. Each has its own individual problems.

Thank you so much for being here. The hearing will be adjourned subject to the call of the Chair.

[Whereupon, at 4:10 p.m., the hearing was adjourned, subject to the call of the Chair.]

SEX AND VIOLENCE ON TV

TUESDAY, AUGUST 17, 1976

House of Representatives,
Subcommittee on Communications,
Committee on Interstate and Foreign Commerce,
Los Angeles, Calif.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 8544, Los Angeles Federal Building, Hon. Lionel Van Deerlin, chairman, presiding.

Mr. Van Deerlin. The subcommittee will come to order.

Today we begin 2 days of hearings here in Los Angeles, the very heart of the world's movie and TV production industry.

When we opened the first phase of these hearings a month ago in Denver, I said that they in no way constituted an attempt at Government censorship or of control over broadcasting, and I say that again today. Neither the Congress nor the Federal Communications Commission wants to get involved in the business of programing decisions. These are purely oversight hearings that the subcommittee is conducting. No legislative action is planned, and I trust that it may never be.

We are here today to discuss and think about the problems and to listen to your views on the family viewing concept introduced by the three TV networks and the National Association of Broadcasters last fall.

The seemingly excessive or gratuitous violence shown nightly on our television screens has disturbed many people. They wonder if violence is sold on television, is it condoned or glorified; do such portrayals teach our children to accept violence, to think of it as a way of solving problems. Does violence on television teach some of us how to use guns, guns that can be used to maim and kill.

In Washington recently, many of us were disturbed by a story out of Baltimore just within the last 2 weeks in which a 3-year-old child, assisted by a 6-year-old brother, managed to cock and fire a magnum pistol, tearing a hole in the chest of a 6-year-old companion, who died on the spot. The child said later he had learned about guns from TV.

We all know by now that the three networks, and most broadcasters throughout the country, say there is no positive proof that televised violence results in real life violence. I have some intuitive problems with that kind of argument. I ask myself how a medium that claims it can sell adults anything from detergents to automobiles, on the one hand, to candies and toys to children, on the other, can then turn around and argue that violence has no selling effect whatever.

It seems ludicrous to me to say that the 8 to 16 minutes of commercials in every hour of television have great impact, and that the 44 to 52 minutes of programing have none.

I am hoping today we can begin a dialog that might help improve the situation. We have many talented and creative people from whom we are going to hear, and we want to hear them. We are eager to know more about the program production industry and why much violent programing is produced. Is it simply because it attracts ratings, or is it because of some other reason?

We are going to hear from producers who have produced violent shows for TV, and from others who have been quite successful in producing nonviolent shows. I hope their testimony will stimulate thought and discussion. Perhaps we will be able to explore some suggested solutions and shed new light on a very serious and controversial problem that affects all broadcasters, all program producers, and all of us millions who watch television.

I am delighted to be accompanied in these subcommittee hearings by a very valued member of the full Commerce Committee, and most particularly of the Communications Subcommittee, Congressman Henry Waxman of Los Angeles.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. Let me welcome you to Los Angeles.

Mr. VAN DEERLIN. I was born here.

Mr. WAXMAN. We welcome you back. Why did you leave? How could you leave?

Mr. VAN DEERLIN. On another occasion when we have more time, I will give you plenty of evidence on that.

Mr. WAXMAN. But I wanted to make a few remarks, opening remarks, on these hearings and the whole question of violence on television.

For almost as long as television has been part of the American household, televised violence has been a matter of public concern. For more than 20 years, since the time of Senator Estes Kefauver, congressional committees have reviewed the issues of violence on television.

It is a phenomenon which greatly concerns the American people. Numerous studies have established that there may be a causal relationship between the witnessing of violence on television and aggressive or antisocial behavior. A great deal of attention, particularly by congressional committees, has been focused on whether there is a linkage between television violence and juvenile delinquency. The long-term effects of exposure to thousands of hours of television viewing continue to be studied.

The presence of television violence, therefore, and the problem of how to cope with it, invites a series of questions about the nature and quality of our society, the impact of such a pervasive and influential medium on our values, the role and force of the marketplace in shaping the content and quality of how television might best serve the public interest and the role of Government as a mediator of these issues when they conflict.

These are the underlying questions to which these hearings are addressed. All of them have been raised again due to the evolution and implementation of the family viewing hour. It is the latest in a series of actions which have been undertaken in the past two decades to confront the problem of violence on television. It remains the most controversial issue in television programming in the last several years.

These hearings by the Subcommittee on Communications are the first in which testimony on the record will be taken on this phase of the continuing debate on television violence. We have sought to receive testimony from all who have an interest in these proceedings and from the broad spectrum of opinion on these issues.

The subcommittee has come to Los Angeles to hear testimony on these issues because this is where most of the people who have been most intimately affected by the family viewing policy live and work.

It is clear, from all the contentiousness which has marked family viewing since it was ratified by the NAB in early 1975 that there are a special series of issues which distinguish it from previous efforts to address the problems of television violence. In particular, did the Government, via the FCC, overstep the clear prohibitions of the first amendment and the Communications Act of 1934 and intrude into the area of programing content?

Have the networks and the NAB, by embracing the family hour, engaged in the systematic practice of Government-sanctioned prior restraint of certain types of programing?

Is family viewing effective, or is it merely arbitrary? Has the quantity of television violence decreased during the family viewing time or not? Does the audience significantly change after the family viewing hour, and has violent programing been placed beyond the reach of children?

Perhaps, most importantly, what other means are available to limit the amount of violence on television? Where should such initiatives come from, and where does the ultimate responsibility for fulfilling them lie?

All of us are concerned that the level of violence on television be drastically reduced. Nevertheless, this is a question which must be approached with a clear appreciation of the first amendment. At the same time, there must be an understanding of the responsibility incumbent upon those who use the public's airwaves to meet legitimate public concerns.

This is the fine line upon which we are balanced. These are the concerns which demand a sensitive and imaginative approach, and it is my hope that these hearings will contribute to a broader understanding of all these issues, thereby encouraging the formulation of some effective and appropriate policies toward solving them.

I very much look forward to the testimony we will receive. Thank you, Mr. Chairman.

Mr. Van Deerlin. Thank you, Mr. Waxman.

Our first witness is Mr. David Gerber, president of David Gerber Productions, executive producer of such shows as "Police Woman" and "Police Story," among others.

Mr. Gerber, will you proceed.

STATEMENT OF DAVID GERBER, PRESIDENT, DAVID GERBER PRODUCTIONS

Mr. Gerber. Good morning.

I have no statement to make. I was told to submit a written statement, but I am here to answer any questions that you gentlemen wish to extend toward me on any subject you wish.

Mr. **Van Deerlin**. You don't wish to give us any general opinion on the subjects that we are addressing?

Mr. **Gerber**. Frankly, as a general opinion, the subject itself has so many broad areas, from various aspects of our industry, the writers, the directors, producers, and the networks, it is a very broad area. Frankly, I wasn't sure I would be here, or wanted to come, because it seems that we have been having these meetings over and over and over again, and I wasn't quite sure whether a message was getting through, but I felt I couldn't afford to be somebody who was a critic, sitting in the bleachers and not come out to the ballpark one time, as a citizen who should do something they believe in, so I am down here.

I am not quite sure where I stand in the situation in terms of formalized grievances against the family hour, but there is something that is on my mind, it goes beyond the family hour, and that is the whole area of violence and what is violence and who decrees what violence is, the interpretation of violence, and the people here are saying that we all know and take for granted that there is violence on television, when I think most of us see very little of television. I don't know how many segments people see of weekly episodes, for instance, but we do read the papers and we do read these clipboard surveys and we do read the studies of well-meaning people, and we get very excited about what violence is.

I am concerned that in the use of the word "violence," that we are encroaching upon certain creative integrities and liberties. I am concerned that we don't have the trust and confidence in the American people who, throughout the years, in the history of our country, and it goes above and beyond just broadcasting now, has avoided all extremism in the 200 years of the type of Government and atmosphere we have enjoyed, and we have been subject to many invasions of both extremes and recently have gone through a very big self-reflection period.

I think we are really not entrusting the public for their own viewpoints, and I don't know what violence is here. I am here to find out what it means. Obviously, we don't like the violence. The family hour, I don't mind one bit. Anybody that objects to the family hour, I don't know; I love the comedies of Norman Lear, the MTM comedies, they are all good comedies; "The Little House on the Prairie," "The Waltons"; who is going to object to that kind of thing, and I wish to God I had a bionic woman or a bionic man in my bag of tricks. They are good enough on both shows, but that is not the point. The point was, was this put upon us without proper discussion? I say yes. Was this put upon us without contacting the top major studio executives and top independent executives? Was this discussed thoroughly, completely? Were our attitudes and input asked for? I say no.

Were there other approaches, where there is a 6-month, 8-month break-in, where the stagger system goes in. Should we not have joined in with education to the public of what we are attempting to do, rather than condemning an industry and saying you are being spanked with the family hour? We are treated like children. From a business viewpoint, I don't think any of the industry has been treated so cavalier, in terms of just turning around and saying this is the family hour, when you had developments and moneys and time and expenditures and sweat and blood and 8 months of prepping. They did that to us in a prime access ruling that came out of the blue in the middle of the season.

I have never seen a group of respected citizens, taxpayers, being treated so badly on both of these occasions, so I am here because I ~~object to the way the family hour came into being. I do not object to~~ the concept of the family hour. I don't think that many people in our business do, but I go beyond that. I listen to violence and the pretty words. Now, nobody wants gratuitous violence. I think that is almost becoming clichés at these meetings. There is no mutilation on television, there is no plunging of a weapon, there is no twisting, there is no sadism, there is no masochism, and what is violence? Is violence 100 Indians coming over the hill and fighting cavalry, or is violence a great scene from "Virginia Woolfe" or "Sticks" or something else that can depress you or bring you up or plunge you into depths and make you seek inside yourself and see what you are about? Where is violence? What is the explanation of violence?

We are throwing it around too easily, and through violence and through these fears, are we encouraging people to come in and encroach upon our liberties and encroach upon our integrity and encroach upon our drama and liberty and license to do what we feel is good, and this is my concern, and this is my worry, and that is why I decided, and I am not a man who has done a lot of research on this, and figures and whatever; I like to think myself an openminded man, an emotional man, but I like to tell it as it is, and so I decided to come down here, and with you, find out for myself where have we gone wrong, or I have gone wrong, as part of the community who has been beset with violence and listening to this twiddly-dee and twiddly-dum team of Carpenter and Johnson condemn "Sarah" for a violent show, and then I said to myself, my God, somebody has to, at least I have to come down here and find out what it is all about for myself, and see if I can't help and see if I can't express my fears, that utilizing sex and violence in a situation in television is not the beginning or harbinger of something we avoided for 200 years, and that is my biggest worry, and they have started on smaller things like that in other countries.

I have respect for the people. I think, in many ways, the people on a Saturday night turn their backs on a militant cop show called, "S.W.A.T." I mention that because I mentioned my own show. They didn't follow it into Saturday night. On Monday night, my show, "Joe Forrester" was another copy show, but they didn't follow it. They watched the "Winter Olympics" like I did. They watched the Norman Lear comedies. They didn't follow it.

It is the people themselves that followed the "Winter Olympics," the "Summer Olympics," "Rich Man, Poor Man." It is the people themselves that found the "60 Minutes" news on a prime time spot, the first time, on Sunday night, or the "Incredible Machine," which was a documentary show, or even more renewed interest in documentaries.

I think the people will reject certain shows and will find others that they want, and one of the reasons for their interest is that the networks are now trying to reach out for broader and deeper programing in terms of world premieres, movie of the weeks, mini-series, best sellers. We see some changes happening because of the people's apathy to weekly series, weekly series which I make my living on, and a turning to newer things they demand, newer and fresher approaches to drama.

Now, these are the same people we have no faith in, in terms of telling you what is violent and nonviolent, and these are the same people who were told by clergy and by prominent columnists not to turn into "Helter-Skelter," so to speak, because they were afraid of the subject matter, and it became one of the greatest viewing audiences in television history, and done very well, if I may add, by the Lorimar Productions.

We did the same thing, if I may say so, with the Lindberg murder case. We certainly didn't exploit it, but more or less took a very intelligent, intellectual approach to it. It paid off in terms of critics, and in terms of numbers.

We are a dedicated group. Sometimes our own enthusiasm and our own emotions, our own volatility takes us too far, and we are slapped on the wrists by various agencies, by our own people, by the networks, by columnists, and we respond, and so I am sorry to get off; you probably should never have given me an opening like that, but I am really concerned about the interpretation and definition of violence, and I object to your statement, sir. Let me go back on that again.

Mr. VAN DEERLIN. Oh, go ahead, go ahead.

Mr. GERBER. No, maybe I am being too harsh, there.

Mr. VAN DEERLIN. No.

Mr. GERBER. I take umbrage to your statement about the 3-year-old girl. It was the same thing that Pastore did about a group of people that burned a woman and blamed it on television. I never saw such cruelty and barbarity in Bangladesh, Lebanon, Ireland, the Middle East, and there is no television there really worth anything, and back in Chicago, in the 1920's, there were 300-some-odd bodies found in the streets when there was just the radio. There was no television then.

We have a bigger, bigger worry, than just blaming it on television, as a scapegoat of violence. There is a violent nature here, and we are not appealing to the disenfranchised or disenchanted at all, and I think we have to look higher than television to realize why we are a prone society to violence and why we are an unsteady society at the moment. Rather than just talk about violence, there are bigger issues involved for this world, for this country, for our Congress, rather than using the media of TV, and I feel that perhaps this may be a good possible headline getter. Again, I don't want to cite clichés, condemning people who actually go out and seek the questions in these kind of committee meetings, but I think the idea of violence for television, upsetting a society today, is really ludicrous, in terms of total blame, or even a major share of what is going on in this world in our society, in our country, today.

Mr. VAN DEERLIN. Thank you, Mr. Gerber. You have made a very effective and forceful statement, which I think was the more so, because you gave it to us spontaneously, instead of reading it to us.

I must say that to have a witness of your caliber and attainments come before us and say that he doesn't know what violence is suggests to me that Johnny Bench might tell us he doesn't know what a base hit is. You have been identified as the producer of programing which is surely very creditable, completely outside any violence that it contains, and yet is no stranger to violence.

I think that we have academic types who would be able to give us some kind of definition as to what violence is. The Annenberg School of Communications at the University of Pennsylvania adopted a count system—with which you or I might disagree—to define what constitutes an incident of violence. Many prime-time shows seem to offer violence which is repetitive and beyond the needs of story telling.

Mr. GERBER. Well, I don't know about the count system, not being a Sioux Indian, but there was really no violence in their count system; just grabbing a feather out of somebody's head and leaving. I think that is fine. I think what we try to do is also make points that count, without having the vile effect of a stimulated violence, coming from a simulated violence.

I don't think any producer steps out, and I want to say right now, I fight the networks. The networks are the toughest persons right now on me, in terms of violence, to a point where I think they flatten out a lot of my stories. They are not just stories; emotions, the turbulence I want to excite or incite within people, the communication set up. You take this thing out of context, and of course I am on rocky ground, because we are talking about violence, but it is in the entire scope of a show, the entire scope of the concept, the entire scope of the emotional involvement of the people and how we execute it and how we do it.

Certainly, David Rintels' subject matter, "Fear on Trial," I think it was a violent period and violent issues were at stake. It was a beautiful show, and it was handled as such. That is why I am saying to you, I know what violence is, and it was like my trying to find a parking spot out here this morning, but I am trying to warn people, if I can in my own way, that we must be very careful how we throw the word around, violence for television, or even a sexual approach to television. because we are dedicated people. We understand. We have to live with ourselves, and I certainly don't want to hear my wife complain about shows every night because they are too violent or too sexy.

Mr. VAN DEERLIN. You have referred to your relations with the networks, about which I was intending to ask you. I gather, from what you have said, that your input from the networks is more in the direction of their trying to restrain you than trying to encourage you to more sex and violence.

Mr. GERBER. Yes; they are worried, because of the Government. They have licenses, as you know, of their own and the affiliates, and I feel the threat, or the implied threat, of censorship from the Government has made them very cautious and somewhat rigid in some of their approaches to programing standards where drama is concerned, so they are really not encouraging us.

It might have been in the past; I am not interested in the past, I am only interested now in what is happening to me. They are very worried about what might be considered violence by outside groups, the influential groups, influential Congressmen, and are concerned about it, and they have become very tough on us, in terms of their interpretation of violence and/or sexuality within a television drama.

Mr. VAN DEERLIN. Since the past is prologue, when did you notice this turn in their attitudes?

Mr. GERBER. Well, I would say within the last, in my experience, within the last couple of years. We have always had a good relationship. We always had to have practices and standards, or the NAB code, and things like that. I mean, we were never completely unlimited in what we could put on the air. At least I never had that experience, but in the last couple of years or so, they have become very, very rigid, to a point where we are worried about just telling—one one hand, we are accused in a weekly series of being pap and not really a dimensional kind of drama. On the other hand, being handicapped, in terms of trying to reach out for drama, and I think in "Police Story," we have been able to combine both. We have told stories of reality, of raw emotions, in context with good, solid stories and relationships and honesty, in terms of the police, in terms of the people they must deal with on an everyday day-to-day basis, and we are happy. Letters don't come to us. No pressure groups have attacked us, so we must be doing it right.

Mr. VAN DEERLIN. I know that "Police Story" has been acclaimed by police themselves as the most accurate account of police work that has been presented on the air. Yet the creator of the show, Joseph Wambaugh, according to some reports, has accused you of deliberately inserting more violence than was called for by the script.

Mr. GERBER. Joe and I had some very good battles. I don't think he has been quoted that way in the last year or so, and we will continue to have battles. Joe has a novelist approach, if you have ever read his novel. I couldn't photograph one chapter of his novel. It would be too violent, in my own estimation, or too sexy or too explicit, in terms of the streets. Joe was looking for emotional turmoil within a man, within himself, and it is very, very hard to depict a novelist's adaptation onto the screen.

Now, Joe is writing some scripts himself. In fact, I am going to do with him the "Onion Field," a four-parter, with Joe writing the script for the first time. I asked him to become the producer, but he refused to. He said, I still want you to hang on, to bang away at, but it is true. Joe and I had to find each other out.

I said:

> Joe, I can bring to you 75 percent of what you want, the honesty, the reality. You have got to give me 25 percent of the entertainment value, to hold a mass audience of 20 to 30 million people a week.

There is nothing wrong in that, and there is no question that Joe brought us around a lot to his thinking, which his whole philosophy is still in that show; very much so, by the way, and that I was able to utilize some of what I consider entertainment values in there, and I think the mixture was very good, but I did promise him not 50–50, but 75 percent of what he believed in out of those novels, the essence of the novels. It was pretty hard to do, but it was an anthological concept, and so we were able to do it better than if I had continuing characters.

Joe believes in emotional power within someone, and if he said, "If you are going to shoot somebody on television, you just shoot their heads off," he said, "and show it right." And I said, "Well, I couldn't go that far," but it was a matter of both of ourselves sounding each other out and, consequently, I felt we have come up with a series that we are proud of.

Mr. VAN DEERLIN. Do you have multiple layers of input from the networks? Do you have programers asking you to do one thing and censors warning you against doing it?

Mr. Gerber. No; the programers are like me, in that they want good shows and exciting shows, interesting shows. They are also having their problems with the program practice people who might come in and say, well, you can't kill this, or this murder didn't look good, or that is too grotesque, or that is too sexual, or whatever, and at times, most of the times, would side with me in terms of, or at least I found this out in the last 2 years, in terms of trying to get the program practices to relax a little bit, if they believed that this itself was indeed a valid, dramatic element within the concept of the show. Taking them out singularly, it is really not fair. You don't get a pure view of what we are trying to do. It is a mosaic of many things going in.

So to answer you, at times I do have variance of opinion for the programing and the opinion of program practices.

Particularly in television, I feel, as do some others, that we have reached a point where they give us more trust, broader responsibilities, in terms of our own creativity, feeling that we will execute properly, in a style that they can accept for the network. There is a handful of producers that do have that liberty, after years of experience, and of good results, so it depends upon the individual producer what kind of relationship he has with the network, but I am not bound by the network to make a show more violent. From a practical viewpoint, they are even afraid to mention that word now.

Mr. Van Deerlin. Has there been a marked change in their attitudes from 2 to 5 years ago?

Mr. Gerber. Oh, yes, sir. If anything else, I must say, everybody is aware, that you just can't get away with those words, gratuitous violence or, you know, just shooting somebody off the roof, or so forth and so on. I think nowadays they are just happy to have a skit of attire.

Everybody now realizes, despite my feeling in my opening speech about having confidence in the American public, there is no question. I mean, what the American public did with some organized groups; Saturday morning, for instance. The difference of Saturday morning television, between now and 5 years ago, is unbelievable. I mean, some of the junk they had on television was ridiculous, and television now on Saturday mornings, they have some wonderful shows for kids, and good shows, so there is no question there.

Mr. Van Deerlin. I know there was a station in Los Angeles that showed—I think, 25 times on Saturday morning—showed "Jack the Ripper."

Mr. Gerber. That is right, but on network television—by the way, the station itself, just recently, was forced to take the shows off, or did it; however they came to that decision, they were taken off. They were these potboiler terror shows, and I agree with that. Saturday morning, though, on the network, has definitely improved, again for these pressures.

Now, there is no question, we are more aware of the sexual attitude, or limitation; let me put it this way, but we never showed nudity on television. We never saw frontal nudity. Really, when you are talking about sex, it is dialogue on television. It is discussion; intelligent, intellectual, adult discussion.

Now, sometimes, intelligent, intellectual, adult discussion on television offends certain people, maybe 20 or 30 people out of a 20 million audience, but what can you do if they are on the airwave? They have the right to turn the channel off. They have the right to turn the channel off and order their children; that we have faith in that family unit, we have to throw back some of the responsibility to the family to turn off anything that is offensive to them, but I think it is more offensive to have 50,000 not like this, and try to turn it off for 20 million people. That is offensive.

So again, it is a thin line. There is no broad stroke at the moment. I am only pleading to look into it a little further before we take that broad brush of violence.

Mr. VAN DEERLIN. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. Gerber, you produce some of the shows that, by some poeple's standards, are considered some of the most violent shows on television, yet I find it interesting that you have no objections to the family TV viewing concept.

Evidently, you are having no problem getting your shows on the air, is that correct?

Mr. GERBER. We always have problems getting shows on the air. Otherwise, I wouldn't be here, you know. I would be out there in New York running a network, but I had two shows when I started in the business; "Nanny and the Professor" at 7:30, which is still a great babysitter and in syndication, and I had, "The Ghost and Mrs. Muir" at 7:30. I liked them. They were delightful.

I like watching, "Bionic Woman." I sit there and eat my dinner and read the paper.

Mr. WAXMAN. No; I am talking about your shows.

Mr. GERBER. Those two are my shows.

Mr. WAXMAN. Those were your shows, also.

Mr. GERBER. And I liked them. I was proud of them.

Now, as time went on, I have done other things, like "Cade's County." I have a western coming up called, "Quest," I have a drama, "Gibbsville," which we hope is in the vein of, "Rich Man, Poor Man." We have a flexibility.

Now, you said my shows are the most violent. I haven't seen a list that way. I know "Sarah" is more violent than "Joe Forrester." It only made 10 on that list that I just read recently, but I have not been cited for violence officially or formally, or in any letter that came from any organizations or been censored by the network that our shows are too violent, so I don't know.

If you are saying I am action prone, or adventure kind of show, or I am a signature of reality on television, I would accept that, but not that I am violent prone.

Mr. WAXMAN. I am certainly not making any accusation about your show, but some people say that these shows, like "Police Story," "Police Woman," "Joe Forrester," they involve a lot of shooting, they involve maybe action, but the kind of action that some people consider violent and have some concerns about having those shows on television.

Can any of those shows be shown between 7 and 9 in the evening, during the family viewing time?

Mr. GERBER. Well, I think segments can be. I don't want to say that openly. If we go by the family hour concept of showing the shows that we mentioned, I just won't show those shows at 7 to 9. Keep my shows at 9 to 10, but don't punish those shows at 9 to 10, because you have a family hour at 8. That is another concern of mine.

I don't think they should be at, say, 7 to 8. I think some segments of "Police Story" should be seen by children, should be seen by young people and teenagers. We have a heck of a lot of good elements to tell; runaways, for instance, for teenagers. Well, I think we did an awful lot in the last 4 years of showing the other side of the police as human beings. I think some could be; some segments, but as a series, no. I would think we should be at 9 or at 10 o'clock.

Now, I have a series that didn't make it, called "Medical Story." It was an anthology, had great reviews, good critical reviews. It didn't go through. Perhaps it was too issue-orientated in a very sacred area, but I will tell you that some of those segments are much more terrifying to people; in fact, they probably were, than some of my shootouts in the "Police Story." We talked about abortion. They don't like that, or they become uncomfortable, some segments of the audience. We talked about sterilization. We talked about unnecessary operations, especially with women. We hit them with reality.

Now, these are subjects that are not endeared by everybody else. It scares quite a few people, but they are certainly stories to be told, in the way we told them, and we attempted to.

Mr. WAXMAN. Well, were any of those shows, like "Medical Story," or "Police Woman," or "Police Story," or "Joe Forrester," any of those shows, as an ongoing series, permitted by the networks to appear between 7 and 9?

Mr. GERBER. No. no.

Mr. WAXMAN. The answer is no?

Mr. GERBER. No.

Mr. WAXMAN. And therefore, they have been on at 9 o'clock or thereafter?

Mr. GERBER. Yes; 9 and 10 o'clock.

Mr. WAXMAN. Do you know whether children watch your shows?

Mr. GERBER. I imagine they do. I have not brushed up on my statistics, since I didn't feel I had to, but if it is 8 o'clock in the Midwest, I am sure a lot of children are watching some of those shows. I am sure that there is a second set, or I am sure that some of them are watching it with their parents.

Mr. WAXMAN. So you say 8 o'clock in the Midwest. Is it the case of the family viewing is 7 to 9 on the west coast and the east coast, but from 6 to 8 in the Midwest?

Mr. GERBER. That is right.

Mr. WAXMAN. Is that based on the assumption that children go to bed earlier in the Midwest?

Mr. GERBER. I really don't know that. Well, yes, it is the assumption that the Midwest goes to bed earlier than the east coast or the west coast, but my show is at 10 o'clock. Well, no, "Police Woman" is at 9 o'clock at the moment. We switched in mid-season last year, so there is no question in my mind that young people probably see these shows at 8 o'clock, just as well as you can go to any movie house and see certain kinds of shows, despite the restrictive clause, where there is even more action, and certainly more nudity, than what we show on television.

Yes, they do.

Mr. **Waxman**. Now, you say your shows, in your opinion, are not violent?

Mr. **Gerber**. I didn't say they are not. They are not violent, as the word "violent" is being used by various people today; no.

Mr. **Waxman**. Are there shows on TV that you consider violent?

Mr. **Gerber**. No; I have seen shows that I consider violent acts, and if I try to treat them, do they add to the theme of that particular show; do they add to the emotional impact of that show, and then I say to myself, this is the computer going on in just a few seconds. Is the emotional value worth it for it, and sometimes I feel that it is not. I feel they went too far.

I have been caught where I have gone too far. I have been corrected by my own staff, or even by the network, and we pulled back. Overall, I think I make good, entertaining shows.

Mr. **Waxman**. If the action, or what some people might call violence is part of the theme of the show and fits in well, then you think it is appropriate to have it on television as part of the show?

Mr. **Gerber**. I am not sure I understand that.

Mr. **Waxman**. Well, I gather your point is that if the violent action fits in within the programing itself, within the program, within the theme of that particular program, you feel it is appropriate because it is part of the drama itself?

Mr. **Gerber**. You know, you are calling it a violent action. It may be action that you consider violent and I don't. And that is the difference, what I am trying to say, and that is what worries me about how we are interpreting these things. What I am trying to say is, I may want to put on a violent show for various reasons, but what kind of a violent show will I put in? I could do a violent show with two great actresses sitting there and discussing the world and the miseries of women within the world and have you wrung out, where you will see some fantasy police action adventure with black and whites running up and sirens going, and so on and so on, and you might not remember it 10 minutes later, nor would the kids.

So I just don't want ro see us being handicapped and pulled in, to try to do good, honest, dimensional drama which may have facets of violence which belong within that concept, or it can be interpreted violence within the scope of that dramatic telling.

I think it is our dramatic integrity. I think it is a freedom that we are looking for.

Mr. **Waxman**. Given that view, then why do you support the family viewing?

Mr. **Gerber**. I love it.

Mr. **Waxman**. Why do you love it? It restricts those kinds of shows from 7 to 9.

Mr. **Gerber**. I think it is fine. That is one kind of entertainment, and there are various forms of entertainment, and sometimes I like to see a musical, sometimes I like to see a comedy, and then sometimes I like to see a good, hard, action show, so I don't think it is either this or that. I think in the evening, when I come home at 8 o'clock; I don't get home that early, but when people come home at 8 o'clock and look at a show, they want to see light entertainment, and some of the only family shows, and really, we have to give credit to Norman Lear, in terms of the subject matter that he had brought about; the network is taking a position that these things will stay on the air, the spectrum of people saying, thank God, that we have cracked through social barriers through this comedy, and if they had listened to people at the time, CBS probably never would have had, "All in the Family," and we would have missed a milestone in television, if we were listening to this kind of outside pressure.

Mr. WAXMAN. But if I want to see a action-filled show at 8 o'clock in the evening, I can't watch it.

Mr. GERBER. I see what you are saying. There should be a choice.

Mr. WAXMAN. Aren't we, in effect, saying that from 7 to 9, we are going to have only one kind of programing, and after 9, we are going to have only another kind of program?

Mr. GERBER. No; I am saying this, and that is why I say, I am a little between the cracks here. I am saying I don't mind the family hour. What is to mind about a good Disney show, or what is to mind, as I say, "The Little House on the Prairie," or watch a "Mary Tyler Moore," her comedies; I mean, they are fun and they are good, and there is nothing wrong with that.

What we are saying is, it is wrong to be legislated. It was wrong to be told. It is wrong not to be consulted. It is wrong not to seek our input. It is wrong to say, here it is, do it. That is wrong, and that is why I am here, really, as a harbinger for the future.

I want us to realize where are we going with restrictions to one of the great communication systems in the world, of 200 years. I don't want to get on the soap box, but we have outlived the witches of Salem, and we have outlived the Aliens' Addition Acts and we have gone through the Espionage and Mobilization Act of the two World Wars and McCarthyism in the 1950's and 1960's, and self-reflection, and we are now, as a country, have repudiated all extremisms, left, right, and whatever, and believe in what we have, and we are now coming to a point at this moment out of a bad period and having pride and regaining ourselves. Why can't we have the same confidence in people in television? Why can't we believe that people will turn off and turn on, the way they should or shouldn't?

Why can't we believe that the family has the responsibility for the child in front of the television set? Why can't we believe in the American public, and not insult their intelligence, when it comes to what they should see and not see?

One shove is violent; two bodies is violent, one isn't; don't kill this guy, wound him here; so forth and so on.

Mr. WAXMAN. I trust the American people to make that decision, too, but do the American people have the opportunity to make a decision on the kinds of shows they have, when, at 9 o'clock, we have one police show on one station and another police show on another station and another shoot-'em-up on another station, and before that, you can't have any of those kinds of shows; do we really have the choices for the America people to see the kinds of things they want?

Mr. GERBER. At the moment, you are limited in terms that you have three networks, and they put on the shows they want, but the three networks have all kinds of surveys, right or wrong; all kind of researches, right or wrong, and attempt to put on the programs that can reach the people, and honestly, they do try to reach the people in the mass audience, but that is their business.

Now, however, you say, well, hey, there are only three voices and three opinions. Well, the technical aspects have not caught up with us, but we are going to have multiple channels in the future, where we have more and more shall I say choices. For instance, right now, you can turn to PBS. Almost every major city has a PBS station, and, they can turn to that and get the more esoteric kind of entertainment, or the more dramatic or dimensional entertainment. Some, by the way, if they are true to the literature that they dramatize, they probably have more sexual aspects or violent aspects than some of the prime time television, but they have good taste, and I think they do things that are worthy.

So that you have also movies, you have ballet, you have opera. My point is that there are choices in the American spectrum of entertainment life that we have. We also have a choice of turning off a set.

Now, I made a statement before that in this last season or two, there seemed to be an apathy of the American public to American television, weekly television. You know, I am in weekly television mostly, although I do do some long form; they have a feeling that if they miss a detective show on Monday, they will find the same plot in another detective show Wednesday, but they are the ones that have picked up, as I have said, and I am afraid I am repeating myself, the special programing, the happenings; the "Winter Olympics," the "Summer Olympics." Even the documentaries have done better, and things like that, and we find that the networks have responded to the people's tastes. You have best sellers, big events, or you have many more world premieres, you have miniseries and all these movies of the week and special programing, and they are coming more and more to the forefront because now the networks feel that the people are making more demands, more selectivity, rather than the normal kind of weekly television activity you can get.

Mr. WAXMAN. Do you know whether any of the shows that have been accused of being violent, whether they are or are not in your opinion, have not been able to get on television because of the family viewing; have not been able to get on at all because of the family viewing?

Mr. GERBER. Well, I don't know of any specific show. Again, you can almost take any subject matter, and it is your treatment that can make it acceptable or nonacceptable, in terms of anybody's violence. We thought we were in pretty bad shape with "Police Story," because I wanted to do reality.

Mr. WAXMAN. If you did reality, it would be much more brutal, wouldn't it sometimes, than what you have on your show?

Mr. GERBER. If you do reality, it will be much more honest, and if you do it right, you can accept it, because it is a learning experience and it is a challenging experience. On "Police Story," we do a lot of research. I mean, we don't even let writers give us story lines. We give them the research, and they formulate it and bring it back to us, and then we have Joe look it over, so our adherence, it is almost a ritual to reality, but that is just one program and one form. I hate to just do it on that, but going back to your question, for instance now, I know police stories are not that well in demand at the moment by the networks. They feel there is enough of them, we are saturated with them. The public themselves are getting somewhat tired of them. They will always have one somewhere.

They are trying to break in with the western, to go back to the natural heritage of the country, things like that. I am attempting to do that with the only western on television. Whether it will be successful, I don't know, but I am going to do my brand of reality, rather than just two cowboys on a horse talking. You know, we are trying to save the homestead, but once again, they are seemingly listening to the public's response.

Now, any time you have just three companies as the bosses, you always have some kind of a monopoly situation, and any time they can dictate programing contents, and whatever, you have some kind of a monopoly situation. There is no question about that.

Mr. **Waxman**. They, in effect, do dictate programing content?

Mr. **Gerber**. Oh, yes. They have the final word. There is no question about it.

Mr. **Waxman**. The final word is with the network executives? Are they the ones that have the ultimate decisionmaking ability to decide what goes on and what does not go on television?

Mr. **Gerber**. Oh, yes. They have it. They have it. Now, we have an opportunity, some of the men in the room behind me and myself, to talk to them and to perhaps persuade them in terms of what our shows are and why they should go on the air and, in some cases, we will get listened to, but then again, that is a certain amount of people who will have reached that particular level, but in the final run, and I will say this: They have the final decision. There is no question about it, and they will go for the show itself.

In other words, if they have a good relationship with me, and for instance, because I have served them well over the past years, and another producer comes along with a single show that appeals to them, they will go for that single show. They are democratic that way. I mean, in other words, no producer really has a hold on them. They look for the show that they feel will bring the best response and success to their network.

Mr. **Van Deerlin**. If Mr. Waxman will yield.

Mr. **Waxman**. Certainly.

Mr. **Van Deerlin**. After a series has run its course on a network, do you retain control for syndication rerun?

Mr. **Gerber**. Yes, sir.

Mr. **Van Deerlin**. And do you find that the combination of family viewing, with what I think is a somewhat abortive prime time access rule—it was intended to stimulate more local production on television, and has merely encouraged syndication—do you find that the limitation under family viewing rules has made it more difficult to sell?

Mr. **Gerber**. Very much so. Very much so. That is another thing that caught us. We were developing films and we put a lot of money into the hour shows, and there were a lot of overages, as you know, and the overages are supposed to come back to you through syndication and domestic, and all of a sudden, here we had this family hour hitting us, and we had a lot of these shows now——

Mr. **Van Deerlin**. And there is no place for a station to squeeze them in.

Mr. **Gerber**. No. No, it is not right to treat a business enterprise in industry like us that way, without the thinking of it, and some of us were caught very much so with our red ink, and you know, in the foreign markets, the quotas are beginning to shrink and it is a little tougher to get American export, and I think we are one of the best salesmen. Our show is going over into the American export, and so that we had a very big problem.

Now, some of these shows are finding their way into 11, 12, 1 o'clock, in the late nights, but we can't get on at 7 and 9. It is ironic, and I applaud them, that the comedy masters in our town, Grant and Norman and Jimmy and Allan Burns back here, were really the ones sitting up and fighting against the family hour, and really, their comedies could play in the family hour, so they were speaking for their own beliefs and principles, rather than an economic belief.

I think it is one of the few times here that producers of hour drama shows have had a chance to talk about the family hour, where we really get hurt economically, I think, as well as—certainly, we are dedicated. I am not going to apologize for that and that principle, but so on both sides, economically and our own dedication, which we feel that it blunts; our own integrity. We are worried about how the family hour came into being. I personally am worried about where will this lead us in the future, five, ten, fifteen years from now, when we do have multiple communications, when we do have technology that is going to change the whole world.

I want the system that we have had for the last 200 years to prevail throughout, confidence in our people and a free communication system, and it held this country solidly through very turbulent years.

Mr. **Waxman**. We appreciate your testimony.

Mr. **Van Deerlin**. One final question—and I don't refer to the violence of two ladies talking to one another about traumas within them, but the head bashings. Is this more expensive, or less expensive to produce than the balance of the show?

Mr. **Gerber**. It is less expensive. In other words, the things I do on a physical basis, be it violent or whatever, but let us say yes, it is much more expensive in terms of doing stunts or cars.

Now, if there is a running or just a shoot-out, it is different. If we do what we call hardware stunts, it is more expensive. If we have a shoot-out, say, and an interior within an apartment, just with three or four people and we don't have to go off the lot, then it is less expensive. If you have just two people talking to themselves in a great dramatic show, it is a cakewalk.

I am envious of Universal's "Bionic Woman," and I have got more action in my title than they do, but they have a fantastic concept that I love. I watch them with envy. I mean, she jumps off with slow motion and goes through with that music behind her, and you think she is turning upside down in the world, and it is a great gimmick and it pleases the people, and I look and I say, oh, my God, I have to go out and start World War III before I can get that kind of reaction, so in a way, it varies, but normally yes, if you are talking about physical action, it is a much more expensive thing.

Mr. Van Deerlin. Whether or not hardware is involved?

Mr. Gerber. With hardware, like cars.

Mr. Van Deerlin. Breaking chairs over one another's heads, and that sort of thing?

Mr. Gerber. It is more expensive every time you use it. It is stunt work. You have to use stunt people, you have props and so forth and so on. It is more expensive.

Mr. Van Deerlin. Well, I am very interested in that response, because I think one of the points that Dr. Gerbner of the Annenberg School made was that it was less expensive to produce sequences of 6, 7, or 8 minutes of violence, and that this might be one of the contributing factors.

Mr. Gerber. Oh, no, no. You will have some of my own associates here. He is wrong. I say, because of a gimmick prevailing in both the bionics, and they are not inexpensive pictures to make; they are outdoors a lot, but I mean comparatively speaking, it is a beautiful gimmick, and I just use that more or less in levity, but in order to do the kind of show I have, the action shows, we have got three days out. At my studio, they like to see me take 3 days out on location and 4 days in, to keep an atmosphere going, and then you have black and whites and cars, and every time you do a stunt, you employ your stunt men, and it costs you extra. You have a double. The props cost money, and the stunt man's routine costs money. So really, it is not cheaper to do that.

Now, if you have a bunch of people holed up in a room and they start shooting each other, then, of course, it is cheaper, but then you have the kind of thing you don't want for television, and neither do I.

Mr. Van Deerlin. Thank you, Mr. Gerber, for very stimulating opening testimony here.

Mr. Gerber. Thank you very much. Thank you, sir.

Mr. Van Deerlin. Our next witnesses make a two-man panel; Mr. Grant Tinker, president of MTM Enterprises, and Mr. Allan Burns, executive producer for MTM, producers of "Mary Tyler Moore Show," the "Bob Newhart Show," "Phyllis," "Rhoda," and many more.

Welcome to the subcommittee.

STATEMENTS OF ALLAN BURNS, EXECUTIVE PRODUCER, AND GRANT TINKER, PRESIDENT, MTM ENTERPRISES

Mr. Burns. Like Mr. Gerber, I have no prepared statement, either. However, I do have a couple of short remarks that I would like to make.

No. 1: Unlike Mr. Gerber, I am violently opposed to the family-viewing hour for several reasons. I think, No. 1, it is a hypocrisy. I think it is a sop.

Mr. Van Deerlin. Are you violently or just strongly opposed?

Mr. Burns. Strongly; a sop on the part of the networks to the public, to the legislative branch, perhaps, of the Government, to make them feel that something is being done. I think that absolutely nothing has been done, except to postpone it until 9 o'clock, 8 o'clock central time.

Mr. **Van Deerlin**. And mountain time.

Mr. **Burns**. And mountain time.

I think that the violence continues unabated at that hour. I think that it deprives the viewers of freedom of choice, as Mr. Waxman indicated. When you have an hour in which there is nothing but family viewing, I think that is dangerous, because it leaves the viewer no opportunity to look at anything else he would care to look at.

I have no objection to family shows, of course.

Third, I think it is the duty of television, the networks in particular, not to censor, but to educate, and I think that by the elimination of ideas, perhaps, in the family-viewing hour, which I will get to in a minute, they have done that. They have abdicated a responsibility.

There was a time, perhaps 15 or 20 years ago, when the area of television to which the networks pointed with the most pride, I think, were the drama shows; human dramas, dramas about important topical subject matter. I think that those types of shows have almost disappeared, in favor of the action shows, euphemistically called action shows, which are substitutions for violence.

I think, conversely, during these years, comedy shows have begun to fulfill that void of delving into human relationships, or the human comedies, getting into subject matter which is both topical and important, and I think to throw comedy shows into this ghetto, called the family hour, which is all they have done for the most part, and then to say, we are going to be tougher on you guys because you are now in this supercensorship period, is to deprive the public of important kind of comedy that has been developed in the last 5 to 10 years.

I think it is interesting that you gentlemen have to differentiate it between sex and violence, because I think they are two totally different things. I think there is too much violence on television. I think there is, on the other hand, almost no sex; certainly no explicit sex on television, and I am glad that you have made that distinction.

That is all I have to say.

Mr. **Van Deerlin**. Well, I have always tried to maintain a distinction between sex and violence in my own house.

Mr. Tinker.

STATEMENT OF GRANT TINKER

Mr. **Tinker**. I also have no prepared or formal statement, though I have got Allan, with whom I had not talked about what he was going to say, got to that point, because I think it is the key to at least our presence here, is that I have resented from the beginning of the family-viewing doctrine, or whatever it is formally called, the marriage of sex and violence, because I do think they are obviously very separate, and in terms of television's sins, I see only one there. I agree with Allan entirely, and with what you gentlemen said in your own opening statements, that there is indeed an obvious amount of gratuitous violence.

I don't think there is gratuitous sex, or any sex at all, in the way the word seems to be used. I think there are adult themes. David Gerber referred to things that Norman Lear has done, and I hope in our more subtle way, perhaps we have treated it some, and I think those are advances in the art of television, and I would defend our doing them and the networks broadcasting them, and I would take issue with anyone who found fault with those things.

At the same time, I would like to go back to something that Dave Gerber said. I don't know whether he meant to say it exactly this way, and I don't say it in a self-serving manner, though we do have to do business with the networks, as you know; I don't think they are all venal guys who are spending the entire day worried about their licenses. I think there are some very well-meaning, well-intended people~~, one of whom used to be me, which is probably~~ why I am saying this; that they do have a fair amount of responsibility, and while they are competitive with the other two, and it does lead to excesses on occasion, I think I would give them a little more credit for having done the job pretty well before there was family viewing so designated, and the thing that I didn't like about the arrival of family viewing, which I thought was improper, and I don't have any evidence to this effect, but I gather that there was seeming, or imagined, or real pressure, congressional, which I suppose means it starts even before that from people somewhere, through to the FCC, and that to the networks, and ultimately that has a bearing on the product that we are allowed to make and to market.

But I think it is entirely artificial, I guess is what I am really trying to say; that the network system, the censorship system, the standards and practices, and the way that they performed those jobs prior to family viewing, was, with some occasional exceptions, more of an innocent variety, I think it was a good system. Whether a show was on at 8 or on at 10, that it was evaluated by them intrinsically, just in terms of what it was supposed to be, and whether it was proper to present it.

And I don't like the blanket aspect that the family-viewing doctrine brought, and I also do think, and someone has mentioned this, that it has resulted in a concentration of the more action oriented, and, therefore, violent shows, at 9 o'clock and later.

Mr. VAN DEERLIN. Since you gentlemen produce shows which are notably free of violence and, as you have noted, of explicit sex, what have been your problems with censorship, if any?

Mr. TINKER. I think Allan might better answer that, because I have a feeling it is prior censorship and self-censorship, as opposed to after the fact.

Mr. BURNS. It is very subtle, and therefore, insidious. At the beginning of this previous television season, we had found out about the family-viewing hour, was to find out that a show that I am executive producer of, called "Rhoda," was being moved from 9:30 on Monday night to 8 o'clock, which put it within the family-viewing period, and this was the first time I had heard the term, and it worried me a little, because there is something a little intimidating about the term, "family viewing." It indicated that there was going to be some type of supercensorship within that period.

Mr. VAN DEERLIN. Or could it, Mr. Burns, have reflected the confidence of the network executives that "Rhoda" was entirely appropriate for family viewing?

Mr. BURNS. Well, that is what they said.

When I asked for a meeting, through Mr. Tinker, with the network executives about this, I said in the meeting that we were concerned that we were going to be moved into this time period, because we were doing a show then about a married couple, newly married couple, though not particularly young, in terms of age, and we wanted to deal somewhat honestly with adjustments that have to be made in marriage, and among those subjects, I suppose, are sexual adjustments that have to be made.

And I felt that somehow the family-viewing concept was going to restrict our ability to discuss, of discussion in this area. So we took a meeting with a group from the CBS programing department, who said—the programing department gentleman said they saw that there would be no problem in doing the same type of show we had done, because we had always seemed to have done it in good taste.

A gentleman who was there from the program practices department said, or I said: "What is the family-viewing hour? What is your policy?" And he said: "Well, I guess it is as our Vice President in Charge of Program Practices has stated: 'Who will know it when we see it.' " And I said: "Well, in other words, you don't know what you want. You only know what you don't want; you will know that when you see it?" He said: "Correct." And then I said: "Then how are we expected to do anything creative, given that kind of loose guideline? It is not a positive guideline; it is a negative guideline. So we have to try and guess what you are not going to want." So it is that kind of censorship.

We were then told later by the representative of broadcast standards, who was attached to our show, that we weren't going to be able to do exactly the same type of show we had done at 9:30. Quite explicitly, he said that; that there would be certain areas that we would not be able to get into; birth control, for example.

I said: "Well, you have never had any problems at 9:30 with birth control. Nobody ever complained about those kind of jokes, or the subject about it." He said: "Well, you can't do it this year."

Mr. VAN DEERLIN. This year? He said you can't do it this year?

Mr. BURNS. Yes; that was last season.

Mr. VAN DEERLIN. Yes, yes.

Mr. BURNS. You could have done it, in other words, prior to this. You can't now.

He also said, and this was even more intimidating; he said: "I don't have any particular problem." And in several areas he said this: "No problem with this joke or this line, but I am going to ask you to take it out anyway." And I said: "Why, if you have no problem with it?" And he said: "Because they want us to show that changes are being made." And I said: "Who are they?" And he was very vague about who they were, and the implication was that they were somebody that he had to answer to, but that they were having to answer to somebody else, in turn, and so I wasn't dealing any more censor on a 1-to-1 basis; man to man, or man to woman, as it had been before, but now I was dealing with ghosts.

So that the censorship is very real, and what it did was to cause us to pull back from the types of stories that we were doing, because we didn't want to have trouble.

You know, I plead guilty to the fact that we didn't fight harder about it. We were intimidated by several of these early episodes, so that we did pull back. We made their jobs easier for them.

Mr. **Van Deerlin.** You pulled back in advance, but there were some specific occasions in which lines or sequences were deleted?

Mr. **Burns.** Oh, yes, and subject matter. There was a show which this company produces which I am not connected with called, "Phyllis." I have a parental interest, in that the character, "Phyllis," was created on the Mary Tyler Moore Show, which I do produce, and it is a spinoff of the show, but early on in that season, there was a meeting called, and the producer of the show, Ed Weinberger and Grant, asked me to be there because I was interested. First of all, I was on the Writers Guild Family Viewing Committee, and second, because I had an interest in the show, and maybe I could bring a certain—I was made perhaps a little more detached than Mr. Weinberger was, who was dealing with the network in this particular case, and it had to do with the very first show that they wanted to shoot after the pilot had been bought, and the network had said: "You simply cannot shoot this show. The theme, the material, is not proper for the family-viewing hour."

The theme had to do with Phyllis' teenage daughter, Bess, spending the night away, or a weekend away, a ski weekend. Phyllis had some reason to think that her daughter had spent the night with a boy at this ski camp, ski lodge, and this show had to do with Phyllis' inability to discuss this problem, or to discuss whether or not she had or hadn't, with her daughter.

CBS unfortunately characterized the show as: "Did Bess get laid?" That was their terminology for this particular show. We objected to that. Ed objected to that.

Mr. **Van Deerlin.** Not for program publicity.

Mr. **Burns.** No; I am saying that the Broadcast Standards Department characterized it that way, and Ed Weinberger took exception to that. He said: "I don't think it is about that at all. I think it is about a lack of communication between generations," which I think is a very proper subject and theme to be within the family-viewing hour. They didn't seem to think so.

There was an impasse. Mr. Weinberger and his coproducer, Stan Daniels, had to threaten to quit. They didn't just threaten to quit; they said: "We will quit. We cannot produce this show, given such nebulous guidelines."

There was another very frightening statement that was made during this meeting by one of the people from broadcast standards when we asked what particular guidelines did they use in determining what was proper or improper for family viewing, and one of the gentlemen said: "We try not to offend the most uptight parent we can imagine watching with his family," and it is a horrifying concept.

You know, Ed, I think, stood up and said: "Well, I have no way of knowing who that person is or how to write for him, and how dare you try to inflict that kind of guideline on us?"

So they did have to threaten to quit. I think Mr. Tinker told the network that if he would be without Mr. Weinberger and Mr. Daniels, he would not be able to produce the show, since they were the creators of the show and the producers, and he had nowhere else to go. It was only then that the network thought that they might find some type of accommodation, and there was a compromise worked out, which I think undermined the general theme of the show.

But it was that type of meeting which had a very intimidating effect and a very chilling effect on the creative people in our company, and it was my understanding that things were going on like that elsewhere in the industry.

Mr. **Van Deerlin.** Mr. Waxman.

Mr. **Waxman.** I am interested to hear from both of you gentlemen, the way that censorship has taken place before and after the family viewing, and Mr. Tinker, you were not offended at it before. How was it conducted? What is the process?

Mr. **Tinker.** I was not offended at the system before, because I think they do own the theater, and they have every right to have a larger say in what is played in that theater. I was occasionally offended by an individual incident, and we have had some pretty good scraps with networks, particularly CBS, but that just happens to be where most of our product has been. The give and take of the system, I thought, worked before.

As I said earlier, there were occasional lapses. I think then when the family hour came in and just imposed a kind of an umbrella standard on one part of the schedule, that this is where it broke down for me. I called that artificial, and there probably are many better words than that.

Mr. **Waxman.** You don't have total creative control over your shows? You never did?

Mr. **Tinker.** No, indeed we do not.

Mr. **Waxman.** There is a give and take with whom? Is it a censor that is assigned to do that?

Mr. **Tinker.** No, the creative aspect, that is a matter of give and take, though in the case of our kind of show, there is a great deal of it with the program people at a network, as opposed to the standards and practices people.

Mr. **Waxman.** There are two separate organizations?

Mr. **Tinker.** Those are different departments.

Mr. **Waxman.** Program and practices and the programing. Could you tell me what their differences are?

Mr. **Tinker.** Well, to oversimplify it, the program department selects and buys the programs, and the standards people are concerned with the content of those programs, in terms of standards and taste and morality and so on.

Mr. **Waxman.** Is there ever a conflict, to your knowledge, between the two, where one is arguing there ought to be something——

Mr. **Tinker.** Oh, sure. Yes, I think less so today. I don't want to say they run scared, but I think they are better citizens today in the program departments of the three networks than they were some time ago in television. I think there was a time—I attempted to characterize the time by using names, which I certainly shouldn't do, but there was a time in television when perhaps anything went. The idea was to compete with the guy across the street and to do a more appealing program, and the guy in the standards then I called, I think, the continuity acceptance department, who was really in the back room. He is really, today, an equal partner, and in terms of family viewing, probably he is the last word, so he has really moved into the palor.

Mr. **Waxman.** Prior to the family viewing, this standards person had the ability to decide what would go and what wouldn't, based on some notions of what would be acceptable. Was it as arbitrary?

Maybe I ought to address that to Mr. Burns. You described something that sounded so arbitrary, in terms of your dealings, to decide what could and could not be acceptable on the air. Did you have more definite standards before family viewing?

Mr. TINKER. They do have guidelines which are actually written, which I haven't seen, as a matter of fact, but yes, they have a Bible of their own to work from. Probably most of it would be pretty obvious. You know, it is black and white, and yes and no, and God and motherhood and apple pie, and it is pretty much good sense, but then there are those cases which sort of fall between the rules, as it were, and where there is an arbitrary judgment needed.

And then people of good will and good intention, and what not, sit down and reason it out, or argue it out and, to some extent, it is—sometimes, you know, two hells are lost and one damn is retained, again to oversimplify it. Allan spends more time than I do on that.

Mr. BURNS. The difference, to characterize it, is that it was a one-on-one relationship before, and while it was arbitrary, it was based on mutual respect and a certain amount of trust between the two parties.

They knew if we were going to do a show about homosexuality, for example, that we would do it in good taste. They would trust us within certain limits, or the particular representative of broadcast standards would trust us, and he got to know us over a period of years, and he would know that we could do something. We would do it within good taste.

But he was telling us now that even though he knew that we would, it was still no longer acceptable, even though it didn't offend him. That was the difference; that he was answering to people who were answering to other people.

Mr. WAXMAN. And you mentioned the standard that you cannot offend the most uptight parent.

Mr. BURNS. Yes; that was one thing that was thrown out. It is hard to forget that, once you have heard it.

Mr. WAXMAN. Did they hire uptight parents to act as consultants, to advise them of the standards?

Mr. BURNS. I don't know where they had them; I mean, if they had a room full of uptight parents and they would show them the product and see if they pushed buttons, that would be one way of telling, I suppose.

Mr. TINKER. I would like to repeat what I suggested a minute ago, that in the last few years, because this department in each network case has become so terribly important to them, that the manpower is really super, particularly at the top. I mean, they don't throw it away or phone it in any more, as at one time they might have done. These are very bright people doing just a huge difficult job, and I think they should be allowed to do it on this case-by-case, program-by-program basis, the way it has always been done, particularly now that the manpower is as good as it is. That is another quarrel I have with the family hour.

Mr. WAXMAN. I gather one of your objections to the family hour is that they lump the notions of sex and violence together and try to deal with them in a certain time frame; is that correct?

Mr. TINKER. Well, they tarred us with that same brush, exactly.

Mr. WAXMAN. Do you feel there is too much violence on television programing today?

Mr. TINKER. I do, but I am not your average viewer, I don't think. I think I don't get home enough, and maybe because it is my business, I don't watch as much as I should, but yes, I think my answer to that, just as a private citizen or a viewer, would be I think there is too much, and a great deal of it is gratuitous.

Mr. WAXMAN. What do you think can be done? You might not be an average viewer, but you are certainly someone in the industry who knows the alternatives to making these decisions. How should the problems of gratuitous violence be handled?

Mr. TINKER. I think by the networks, in terms of their privately set, individual standards.

Mr. BURNS. And what they buy. They have control over violence by buying. They bought a very nonviolent show called "The Waltons" a few years ago, and much to their surprise—I think this is just supposition on my part, but I think "The Waltons" was bought as a sop again, so they could point to it and say, see, we don't do all violence shows, and when the show took off and was a huge hit, I think they were as surpised as anyone.

And I think they could surprise themselves, and everybody else more, more often, by programing more carefully.

Mr. TINKER. At this point in time, we are very suspect, I think, in terms of answering that question, since we are not all involved in programs where there is even the opportunity to deal with violence.

Mr. WAXMAN. Do you think the networks act in concert in establishing standards to meet this notion of family viewing?

Mr. TINKER. Sure.

Mr. WAXMAN. They do?

Mr. TINKER. Yes; I would certainly think so. I mean the fact that they all declared it within a week of each other, or whatever it was, certainly seemed a little suspicious to me.

Mr. WAXMAN. Well, they certainly acted together in approving the family viewing concept and setting aside a certain time frame, but do you think that they act in concert in their notions of what would be appropriate for the 7 to 9 time frame, and what would be appropriate thereafter?

Mr. TINKER. Do you mean in terms of family viewing or just the responsibility it is in itself?

Mr. WAXMAN. In terms of family viewing.

Mr. TINKER. Well, I think that networks act informally in concert all the time, just because it is a very small business, in terms of people, and people talk to each other, and we all know what the other guy is doing all of the time, so whether it is what you pay for a program or what you charge an advertiser, or the standards that you apply to the material, I think informally and incidentally, or coincidentally, they probably do, yes, with no malice aforethought, I wouldn't think.

Mr. WAXMAN. Well, there are three networks, and Mr. Gerber earlier testified that they pretty much dominate the television market.

Is there really a free marketplace, in terms of what the viewers have an opportunity to see, if the three networks have the decision-making power to decide what is and is not appropriate for the American people to watch?

Mr. TINKER. Well, answering that question commercially, there is not a free marketplace as it exists in other businesses in television. Without getting too sidetracked here, because I am sure that is not the intent of your question, we don't just bring our wares here to you three networks and put them on this table for you to feel and touch and evaluate and buy at some price. It is a very one-to-one relationship from the very beginning of the development of a program idea.

I am working only with you, NBC, and chances are if you and I fail together in the development of this idea, it is dead forever, and I won't get it over to ABC or to CBS.

Mr. WAXMAN. I talked to a man within the last couple of days who produces a lot of shows that have been accused of being violent, and he said to me that he resented, he interpreted and resented this interpretation of those people who produce the comedy shows criticzing those shows that are violent, and they will ask for censorship on the violent shows and then argue for free speech on the nonviolent shows.

Mr. TINKER. Yes; I am not asking for censorship in the way he apparently suggested it. I have already taken myself off that hook by saying I am suspect, to begin with, since we do the comedy shows, but you asked me about violence, and I gave you my personal answer on violence.

I would like to see this same reason applied to censorship, if that is the word, of dramatic shows that I would like applied to comedy shows. There is no double standard, as far as I am concerned.

Mr. WAXMAN. Now, you are both in the business and you accept facts of life as you have to deal with them; that there are three networks. If you have a show and you want to sell it, you want to make a profit and you want to do things that you think are worthwhile, but if you didn't have that real world to deal with, do you think that it is proper for the three networks to have so much power in deciding what the American people will see and not see on television?

Mr. BURNS. I don't know of any other way to go about it, unless there was a producing television pilots, so that the networks would compete for them.

There was a time, I think, when sponsors, in particular, paid for—they used to call it free-ball pilots, and the networks would bid for them, In that way, I think better pilots get on the air because I think that if they see quality, and if there is bidding going on between the three, there is more chance of something good getting on.

Mr. WAXMAN. You are not troubled by censorship when it comes from the networks in the same way you would be troubled by censorship if it came from Government?

Mr. BURNS. Correct. Yes, I think governmental censorship is a very scary prospect.

Mr. WAXMAN. If you have a bureaucrat who is on the public payroll, as opposed to a bureaucrat who is on the network payroll who decides that he thinks something might offend someone and therefore wants to modify it and change the creativity that the people who make the programs wish to put into it, that does not bother you, but how do you distinguish?

Mr. BURNS. I am unclear about the question.

Mr. WAXMAN. If just somebody who happens to be on a public payroll says. I think you have too many hells and too many other words that are inappropriate, or this theme is something that is going to ruffle too many feathers, how was that handled from——

Mr. BURNS. How do you distinguish between that and the network bureaucrat, for example?

Mr. WAXMAN. Yes.

Mr. BURNS. Because I think the network bureaucrat, if you characterize him that way, has some experience in the business. I would hope that he has been working in the business for part, or if not all of his adult life, and might have some creative ideas of his own.

I think governmental bureaucrats are too often influenced by outside pressures.

Mr. VAN DEERLIN. If Mr. Waxman will yield, don't they have the common denominator of putting the kibosh on the doubtful, so as to protect themselves? If they are in doubt about whether something has gone too far, they will say, knock it out, just so they don't take a chance.

Mr. BURNS. Are you talking about the network?

Mr. VAN DEERLIN. Any censor.

Mr. TINKER. Yes; I think that is right. That is true in Government, too, in many cases I think.

Mr. VAN DEERLIN. Well, of course.

Mr. TINKER. Yes; I think that we usually hear about what people don't like, and not very seldom, but less often, hear about what they do. I guess that is axiomatic.

Mr. VAN DEERLIN. Congressmen have that experience, too.

Mr. WAXMAN. And has it been your experience that the family viewing concept restricts your ability to make a profit on your shows in syndication? Have you found that to be true?

Mr. TINKER. Well, it is a little early in the short life of our company to say definitively, but no, in terms of the product we make, the kind of product, we actually stand to benefit by the presence of the family hour, in that the shows that you were talking about earlier, with Dave Gerber, are not now competitive in certain time periods in syndication, so that there is a greater opportunity for us in syndication than there would have been without it.

Mr. BURNS. There is a stigma attached to shows now when they are scheduled outside the family viewing hour, whether or not they are violent or sex oriented, or what have you. I think that if a show gets moved from the family viewing hour, such as "All in the Family" was, where it was on before, it fell obviously within that hour and it was moved out of it, I think puts a stigma on a show that shouldn't have the stigma.

I wonder if Mr. Lear is going to have difficulty selling his show into syndication because it was moved from the family hour.

Mr. TINKER. Not now that it plays in the daytime on CBS, one would not think.

Mr. BURNS. But I think they have very different standards in daytime programing than they do in the evening.

Mr. WAXMAN. Let's say the lawsuit turns out to not succeed, the lawsuit that attempts to restrict the family hour, and that the courts, for some reason or another, decide that the family hour is going to stay in existence, what would then be your notions of what, assuming as I do that you are opposed to the family hour, what do you think can be done? You are against it; do you think that the public ought to be heard against it, or how do you resolve those kinds of issues that the family hour has raised?

Mr. BURNS. Well, I think we are obviously going to have to work within it, because if we can't get it removed, we will have to work within it. I think we will probably end up fighting harder for each individual problem that we have, rather than caving in across the board, like we did last year.

Already this season, it seems to me that they have stepped up the censorship. It seems to me, at least, though it would be hard to document, that censorship has been increased this year over last year.

We will fight harder, and we have fought harder on each show, on each particular incident as it comes up, and I think perhaps we will win some of those battles. I think we have to fight like Mr. Weinberger did on the "Phyllis" struggle and be willing to quit or to leave, just to see if they can make some concessions to us.

Mr. TINKER. I think that is maybe the most important thing that could be said here this morning, and that Allan probably wouldn't say for himself. I am delighted to hear him say he would fight. I think what would happen, if you look down that endless road of family hour, is that the Burns, and the Lears, and the Gelbarts, and the Rintels, and the other superior creative people that television should, by God have, and the audience should see and hear, would weary and leave television and wind up doing other things, and that I think is perhaps a matter that should not be missed here today.

Mr. WAXMAN. We talked about the networks trying to make the programs more acceptable to even the standard of the most upright patent. Do you ever find that the networks come in and ask you to use themes that are more unique?

For example, I notice that next season, gays are going to be portrayed on the "Bob Newhart Show." Was this your idea, or was this CBS?

Mr. TINKER. No, I think that originated with our writers, and that is an episode. I don't know whose publicity that was. I doubt that it was ours. I don't think we would be out pumping out publicity on that episode in that fashion.

Is that a CBS release?

Mr. WAXMAN. No, no. I am just asking. The Wall Street Journal evidently had some article about it, but I was wondering where that idea originated. Whether it was with the networks.

Mr. TINKER. Well, no.

Mr. BURNS. With the producers.

Mr. TINKER. With the producers and the writers.

Mr. BURNS. The networks do not come to you with ideas, the program content, no.

Mr. TINKER. They will come to you on a marginal show, and have many times, as Allan knows, and say, you know, we are going to renew it, but going into this coming season, can we generate some excitement, and then you sit with them perhaps and talk about the kinds of things that you might do; not necessarily sensational things. Just things that are exploitable.

Mr. WAXMAN. Well, I thank you both for your testimony.

Mr. VAN DEERLIN. You mentioned, Mr. Tinker, that you have a concern as a viewer about the intrusion of violence. Do you share Mr. Gerber's inability to define violence when you see it on the screen?

Mr. TINKER. I certainly share his inability to define it, period, yes. I would leave that to much more articulate people than I.

I think I could, on a case-by-case basis, tell you where I at least felt it was gratuitous. In that sense, I can define gratuitous violence. You know, it is a tricky business to define it before the fact, and incidentally, I didn't mean that all violence was abhorrent. As far as I am concerned, it is not, and there are places for it.

Mr. VAN DEERLIN. Well, we don't live in a nonviolent world.

Mr. TINKER. Indeed.

Mr. BURNS. Alan Alda, I think, expressed it very well at a press conference we had when we first instituted this lawsuit, and he differentiated between felt violence and unfelt violence, and that there are certain kinds of violence that are meaningful and that people should see, because it is part of the human condition. But violence for violence sake is abhorrent to us all.

Mr. VAN DEERLIN. Without redeeming social value.

Mr. BURNS. True.

Mr. VAN DEERLIN. Do you agree with Mr. Gerber that this is more expensive to produce than the balance of a show?

Mr. TINKER. I am not too expert in that area. I think probably two guys just flailing away at each other with their fists in a contained situation isn't terribly expensive, against getting David Rintels to write some exquisite scene where they might be exchanging views, so I am not sure that it wouldn't cost more to get David to write that than two stuntmen to fight it.

Mr. VAN DEERLIN. No, I think here he was saying that just to produce what you might call hard-core violence is——

Mr. TINKER. Yes. You know, what he called hardware violence, I guess, I think is probably fairly expensive. As I said, I have no direct experience.

Mr. VAN DEERLIN. Thanks to both of you for not only gracing, but putting additional meaning into our hearings this morning.

Mr. TINKER. Thank you.

Mr. BURNS. Thank you.

Mr. VAN DEERLIN. Our third witness, and I think our final witness for the morning session, will be Dr. Thomas Elmendorf, representing the California Medical Association.

While Dr. Elmendorf is coming to the witness chair, I would like to note some objections that have been voiced concerning these hearings; that certain elements who wished to be heard are not being heard. Although I came in through the garage entrance this morning, I understand that there was a picket line in front of the building protesting the inability of certain people to be heard at these hearings. I should simply like to say that 2 days are not as much time as we might desire in an area as important as Los Angeles to hear all sides, but tomorrow's session, when it ends, will find at least the chairman—I can't speak for Mr. Waxman—but the chairman will be willing to stay as long as there is anyone who wishes to be heard.

As much as I might prefer to return to the hotel and sample the violence from Kansas City on television, I will promise that anyone who wishes to be heard and is eager to do more than submit a statement for the record will be heard before these hearings are adjourned.

Mr. **Waxman**. On that point, I would want to correct one point that I don't think you meant, but you said: To hear all sides. These hearings have been structured to hear differing points of view on the questions of the family-viewing concept and on the issue of violence on television.

We have tried to bring to the hearings different groups and different individuals with differing points of view.

I don't know who the people are that were picketing. We do know that there is some public relations firm that has made a concerted effort to try to have certain witnesses with a certain particular point of view to ask to be heard, and when we contacted some of them, we found out they were delegates to the Republican National Convention and couldn't be here at all.

Now, we have attempted to have a balanced presentation, and I have discussed this with the staff because I thought it was very important that we do that.

I would also be willing to stay and hear anyone else who wishes to be heard at the completion of our hearing. We also, for those who might wish to have views presented, are able to accept statements which will be made part of the record and will be part of the record, the same as any other testimony given.

And we had already held hearings in Colorado, and I assume we will hear some more in Washington. There is one gap, however, in the testimony that we are going to be receiving at these hearings, and that we received in Colorado, which I very much regret, and that is the fact that we won't hear from the networks, who play such an important role in television viewing and, in fact, have a corner on the market place of what the viewers will hear and see when they turn on their television sets.

They refused to testify, even though they have been invited to testify, at the insistence of their lawyers, who suggested to them that they might have some detrimental effect on the lawsuit that is pending.

I can't believe that a judge, after all the evidence is in and arguments have been heard, is going to be influenced by what the networks might say, particularly if they are under questioning under this committee.

I have asked them, and I had hoped that they would have reconsidered and given us the benefit of their views, but I hopefully will hear from them after the decision is made, because I think that an important gap is left in our understanding of what is to be done, if anything, about violence on television, when we don't hear from the networks and their censors and their programing people, to see what role they now play in restricting violence on TV, the potential roles that they might play and assisting all of us in understanding the problem further.

Mr. **Van Deerlin**. I share Mr. Waxman's views. I don't want anyone to go away from these hearings thinking that he has been denied a chance to be heard, and therefore, I make the assurance that I do regarding tomorrow's session.

Yes, sir. Do you have something?

STATEMENT OF HOWARD WATTS, LOS ANGELES, CALIF.

Mr. WATTS. The board of education in Los Angeles has come with a statement regarding the family viewing hour on channel 58, and I see that you are not going to allow any of the board members to come and testify, because they are in favor of the family viewing hour, and you people are against it. And I think that is another case of the major——

Mr. VAN DEERLIN. Will you give your name for the record, sir?

Mr. WATTS. What?

Mr. VAN DEERLIN. Will you please give us your name for the record?

Mr. WATTS. My name is Howard Watts, and I am a private citizen. I monitor the Los Angeles Board of Education, and Philip Bardos supposedly was going to try to get the board of education to allow him to come and testify on his viewpoint, of which they passed a report through the board, and they are now putting that policy in on channel 58, and that channel 58 policy is to eliminate any violence within a certain family viewing hour period on their programs, of which the general public really doesn't have a chance to say anything there, either, and I see we are not going to see their view come to this hearing.

Plus, the other question is, why, in Heaven's name——

Mr. VAN DEERLIN. Well, now, just a minute. I am going to ask you to stop right there and to ask if we may use your good offices to convey the word that if someone wishes to be here tomorrow afternoon, he or she will surely be heard before these hearings are concluded.

Now, if we may go to Dr. Elmendorf.

Welcome to the subcommittee, Doctor.

STATEMENT OF THOMAS ELMENDORF, M.D., PAST PRESIDENT, CALIFORNIA MEDICAL ASSOCIATION AND CMA DELEGATE TO THE AMERICAN MEDICAL ASSOCIATION

Dr. ELMENDORF. Thank you.

Mr. Chairman and members of the subcommittee, I am Dr. Thomas Elmendorf. I have been in general practice in California for 28 years and in emergency medicine in the Sacramento area for the last 2.

I appear here today as a past president of the California Medical Association, and as a CMA delegate to the American Medical Association. The medical associations that I represent and I are deeply concerned about the effects of television on the youth of today.

I might say before I begin this statement that I regret that the statement is not before you; 50 copies were forwarded and presumably are somewhere on the current Pony Express.

Mr. WAXMAN. I hope you didn't use the mails.

Dr. ELMENDORF. I am afraid we did.

I did wish to also point out, because you do not have the copy before you, that the major statements that I make today have been documented, and a bibliography is appended, so that there is a reference to the, I hope, factual statements which I make.

Suppose you sent your child off to the movies for 3 hours next Sunday. And 3 hours on Monday, and the same number of hours Tuesday, Wednesday, Thursday and Friday and Saturday. That is essentially what is happening to the average child in America today, except it is not the screen in the movie house down the street in front of which he sits. It is instead the television set right in your own house.

According to the Nielsen index figures for TV viewing, it is estimated that by the time a child graduates from high school, he has had 11,000 hours of schooling, as opposed to 15,000 hours of television.

I would like to repeat that. By the time a child is 18 years old, he has spent more hours in front of the television set than he has in school.

Over TV, he will have witnessed by that time some 18,000 murders and countless highly detailed incidents of robbery, arson, bombings, shooting, beatings, forgery, smuggling and torture, averaging approximately one per minute in the standard television cartoon for children under the age of 10. In general, 75 percent of all network dramatic programs contain violence with over seven violent episodes per program hour.

Concurrent with this massive daily dose of violence over television screens has been a dramatic rise in violence in our society. In 1973, 18,000 young Americans from 15 to 24 years of age died in motor vehicle accidents, with one of every six of these fatalities judged to be a suicide. In 1973, more than 5,000 in the same age group were murdered, and an additional 4,000 committed suicide.

The death rate for this age group was 19 percent higher in 1973 than in 1960, due entirely to deaths by violence.

The largest rise in deaths by homicide during the past two decades occurred between the ages of 1 to 4 years. More than 1 million American children suffer physical abuse or neglect each year, and at least one in five of these dies from mistreatment. It is a social problem of epidemic proportions.

In fact, murder is the fastest growing cause of death in the United States. The annual rate of increase exceeded 100 percent between 1960 and 1974. Our homicide rate is 10 times greater than in the Scandinavian countries. More murders are committed yearly in Manhattan, with a population of 1.5 million, than in the entire United Kingdom, with a population of 60 million.

The age group most involved with the greatest number of both victims and arrests is age 20 to 24. In 1972, 17 percent of all homicide victims and 24 percent of all arrests were in this age group.

Teenagers from 15 to 19 account for another 9 percent of all murder victims, and nearly 19 percent of the arrests. In commenting about such crimes by youths, one author said:

> It is as though our society has bred a new genetic strain, the child murdered, who feels no remorse and is scarcely conscious of his acts.

Now, what is to blame for these heinous statistics? What are the chances that this trend of rising violence can be controlled and reversed? The probabilities are small, unless something is done about the moral and socioeconomic environment in which our young people are growing up today in America.

One thing is certain. For a considerable proportion of American children and youth, the culture of violence is now both a major health threat and a way of life.

We, of the medical profession, believe that one of the factors behind this violence is televised violence. Television has become a school of violence and a college for crime.

Let us take a look at some of the evidence. The Surgeon General of the United States has said, based on a six-volume study of the problem, that there is a causative relationship between televised violence and subsequent antisocial behavior, and that the evidence is strong enough that it requires some action on the part of responsible authorities, the TV industry, the Government and the citizens.

This report was a twin to the Surgeon General's report on smoking. This report on TV violence, in effect, says: Warning. The Surgeon General has determined that viewing of TV violence is dangerous to your health.

Much of this report has been clouded in dispute, so that its full impact has not reached society as effectively as it could. Let me point out just one of the disputes.

The committee responsible for summing up the evidence gathered said that the 23 studies of the report, done by renowned scientists, provide suggestive evidence in favor of the interpretation that viewing violence on television is conducive to an increase in aggressive behavior, although it must be emphasized that the causal sequence is very likely applicable only to some children who are predisposed in this direction.

This has led critics to downgrade the report and say that the violence on TV really only affects those already aggressive individuals, anyway.

I would like to say to that, so what? If it makes aggression-prone people more aggressive, that is enough to make me say something should be done about violence on TV. But what is even more alarming is what the Surgeon General said about those predisposed to violence. He said that television can cause that predisposition. That point has been overlooked. So, television violence can increase a child's aggressive behavior, especially if he has a predisposition for aggression, and, in addition to this, the predisposition itself can be caused by the viewing of TV.

Dr. Robert M. Liebert, associate professor of psychology at the State University of New York, at Stony Brook, concluded in an overview of several studies of the report that at least under some circumstances, exposure to television aggression can lead children to accept what they have seen as a partial guide for their own actions. As a result, the present entertainment offerings of the television medium may be contributing, in some measure, to the aggressive behavior of many normal children. Such an effect has been shown in a wide variety of situations.

And earlier in the report, he said:

> Experimental studies preponderantly support the hypothesis that there is a directional, causal link between exposure to television violence and an observer's subsequent aggressive behavior.

Let us go beyond this report to other findings.

Dr. Albert Bandura, of Stanford University, set out to determine what happens to a child who watches as aggressive personalities on television slug, stomp, shoot, and stab each other. His research team reached two conclusions about aggression on TV. First, that it tends to reduce the child's inhibitions against acting in a violent, aggressive manner; and second, that children will copy what they see.

Dr. Bandura points out that a child won't necessarily run out and attack the first person he sees after watching violence on the screen, but that, if provoked later on, evidence suggests that then he may very well put what he has learned into action.

The reasons that children do not indiscriminately copy their TV characters is that parents suppress any such learning that they don't consider desirable; that is, the children get punished, and children rarely have access to weapons necessary for showing off what they have learned.

"If," says Dr. Bandura, "they were provided with switchblade knives, blackjacks, explosives, six-shooters, nooses, it is safe to predict that the incidence of tragic, imitative aggression connected with television viewing would rise sharply."

One of the lessons of television is that violence works. If you have a problem with someone, the school of TV says to slap him in the face, stab him in the back. By aggressive acts, the bad guy, for example, may gain control of grazing land, gold mines, nightclubs, and perhaps a whole town.

Not until the very end is he usually punished. And, as in the case of the "Godfather," Parts I and II, punishment may never really occur. Because most of the program has shown how well violence has paid off, punishment at the end tends not to have much of an inhibitory effect.

"From these findings," Dr. Bandura says, "we can conclude that if children see the bad guy punished, they are not likely to imitate spontaneously his behavior, but they do acquire and retain concrete information about how to behave aggressively, and punishment of the bad guy does not make them forget what they have learned. They may put into practice this knowledge on future occasions if they are given adequate instigation, access to the necessary weapons, and the prospect of sufficiently attractive rewards for the successful execution of the behavior."

Other studies have shown that viewing violence blunts a child's sensitivity to it. They become jaded to violence on the screen. They condition themselves to avoid being upset by the gougings, smashings, and stompings they see on TV. If they did get involved, their emotions could be shattered.

Now, what about the long-term effects of violence on TV? Researcher D. J. Hicks found that even 8 months after viewing a violent episode only once, almost half of all the children could act out again what they had seen so long ago.

In 1955, Dr. Leonard Eron, head of research for the Rip Van Winkle Foundation, looked into the long-range correlations between a child's favorite TV program, the program's violence content and the aggressiveness of the child, as reported by his classmates. The project, which covered a span of about 10 years, from age 8 to 18, was later picked up by the Surgeon General's study on TV violence. The investigators found a strong correlation between the early viewing of television violence and aggressive behavior in the teenage years. In fact, according to the study, a child's television habits at age 8 were more likely to be a predictor of his aggressiveness at age

18 than either his family's socioeconomic status, his relationships with his parents, his I.Q. or any other single factor in his environment. The report concluded that a preference for violent television at a young age leads to the building of aggressive habits.

As equally alarming as these studies are the findings of researcher George Gerbner, Dean of Annenberg School of Communications at the University of Pennsylvania. He said:

> Anyone who watches evening network TV receives a heavy diet of violence. More than half of all characters on prime-time TV are involved in some violence, about one-tenth in killing.

Because of this, TV breeds suspicion and fear. The report said further:

> People who watch a lot of TV see the real world as more dangerous and frightening than those who watch very little. Heavy viewers are less trustful of their fellow citizens.

To cope with this fear, the heavy watcher must develop a thick skin. He becomes conditioned to being a victim. He becomes apathetic to violence. Gerbner concludes with the observation that:

> Acceptance of violence and passivity in the face of injustice may be consequences of far greater social concern than occasional displays of individual aggression.

So, we have a two-edged sword. TV violence tends to make some people more violent, and it makes others more willing to accept violence as a way of life.

All in all, 146 articles in behavioral science journals, and related reports, representing 50 studies involving 10,000 children and adolescents from every conceivable background, all showed that viewing violence produces increased aggressive behavior in the young.

The accumulation of evidence suggests, as you have heard, that children will copy TV violence; that they often do not do so because of parental control and lack of access to weapons; that TV teaches a child that violence often succeeds and the problems can be solved by violence; that viewing TV violence blunts sensitivity to violence in the real world; that children remember specific acts of violence, and that preferring violent television at an early age leads to more aggressive teenage behavior.

What happens to these children when they grow up? What happens when these children grow up and having been conditioned into thinking that violence works, and having a diminished sensitivity to violence, no longer are under parental control?

What happens to these children when they grow up and do have access to weapons? What happens when they grow up in a world that is apathetic to violence?

We need more studies on these questions, indepth studies.

Is it any coincidence, then, that our real world is looking more and more like the violent world of television? Sadistic, ingenious murders, hi-jackings, kidnappings, ransoms; news reports that are sounding like TV plots. Many of us are questioning whether this resemblance is more than coincidental. In fact, a surprising number of bizarre crimes have beem committed by young people who admit they were influenced by television.

There can be no doubting the power of television. Possibly no other innovation of the 20th Century has so affected our daily lives.

More than cars, planes, radios, movies, and appliances, TV is the most likely to alter our living patterns.

Studies have shown that TV has reduced the amount of time we spend visiting and entertaining friends. We read fewer books and see fewer movies. Leisure time for such things as sports and hobbies has been reduced. We go to bed later because of TV, and we spend less time on household care, play and conversation. It has changed our meal time, and most of us use it as an electronic babysitter.

The response of the TV industry has been generally to uphold the need for violence because violence is what keeps the Nielsen ratings up. They have said themselves that the network is run by salesmen, and that violence sells.

The TV industry has just recently made some effort to control the content of violence by instituting the family viewing hour, and for that we applaud the industry. But there are indications that violence is merely being diverted to other hours, not reduced, and the family viewing hour is itself in jeopardy. The concept is being challenged by a Writers Guild lawsuit, as censorship and in violation of free speech.

Violence may make money for television, but it should not be made at the expense of our children. And I am not so sure that only violence makes money. The National Citizens Committee for Broadcasting recently released a report saying that according to their ratings, the 10 least violent programs are successful network offerings with high ratings.

Based on the evidence that has been developed, the American Medical Association recently authorized a remedial course of action.

The AMA will publish a booklet that will emphasize parental responsibility for their children's viewing and will indicate what to look for in terms of suitable programing.

The AMA will explore with the National Association of Broadcasters the possibility of convening periodic joint conferences on the impact of TV on our children. It will support full funding of research by the National Institute of Mental Health on the influence of television. AMA will urge television stations, in deciding on program content and scheduling, to use violence indexes, which are being prepared by various groups.

We, of the medical profession, agree with Dr. Liebert when he said that: "The most potent, the smoothest way to change television is through even a small minority of citizens who give the impression that they are going to react negatively to the content of the program."

That is why the American Medical Association, at its recent annual meeting, acting on a resolution introduced by the California delegation, has declared violence on TV an environmental health risk factor, and has asked doctors, their families and their patients, to actively oppose programs containing violence, as well as products and services of the sponsors of such programs.

In other words, if you, as a parent, see something on TV that you feel is too violent for your child to watch, make a change in your lifestyle. Turn the TV off, change the channel, and don't buy the products of the firms that support that program through their advertising.

As a representative of the California Medical Association, I want to thank you for allowing me to explain our position, and why we have taken this stand.

[Testimony resumes on p. 124.]

[Dr. Elmendorf's prepared statement and attachments follow:]

STATEMENT OF THOMAS ELMENDORF, M.D., PAST PRESIDENT, CALIFORNIA MEDICAL ASSOCIATION, AND CMA DELEGATE TO THE AMERICAN MEDICAL ASSOCIATION

Mr. Chairman and members of the subcommittee, I am Dr. Thomas Elmendorf. I have been in general practice in California for 28 years and in emergency medicine for the last two in Sacramento, California. I appear here today as a past president of the California Medical Association and as a CMA delegate to the American Medical Association. The medical associations that I represent and I am deeply concerned about all effects of television on the youth of today.

Suppose you sent your child off to the movies for three hours next Sunday. And three hours on Monday and the same number of hours Tuesday, Wednesday, Thursday, Friday and Saturday. That is essentially what is happening to the average child in America today, except it is not the screen in the movie house down the street he sits in front of, it is instead, the television set right in your home.[1]

According to the Nielsen Index figures for TV viewing, it is estimated that by the time a child graduates from high school he has had 11,000 hours of schooling, as opposed to 15,000 hours of television. I wuold like to repeat that. By the time a child is 18 years old, he has spent more hours in front of the television set than he has in school. Over TV he will have witnessed by that time some 18,000 murders and countless highly detailed incidents of robbery, arson, bombings, shootings, beatings, forgery, smuggling and torture—averaging approximately one per minute in the standard television cartoon for children under the age of ten.[2] In general, seventy-five percent of all network dramatic programs contain violence with over seven violent episodes per program hour.[3]

Concurrent with this massive daily dose of violence over our television screens has been a dramatic rise in violence in our society. In 1973, 18,000 young Americans from 15 to 24 years of age, died in motor-vehicle accidents, with one of every six of these fatalities estimated to be due to suicide. In 1973, more than 5,000 were murdered, and an additional 4,000 committed suicide. The death rate for this age group was 19 percent higher in 1973 than in 1960, due entirely to deaths by violence.

The largest rise in deaths by homicide during the past two decades was at the ages of one to four. More than a million American children suffer physical abuse or neglect each year, and at least one in five dies from mistreatment. It is a social problem of epidemic proportions.

In fact, murder is the fastest growing cause of death in the United States. The annual rate of increase exceeded 100 percent between 1970 and 1974. Our homicide rate is 10 times greater than in the Scandinavian countries. More murders are committed yearly in Manhattan, with a population of one-and-a-half-million, than in the entire United Kingdom, with a population of 60-million.

The age group most involved, with the greatest number of both victims and arrests, is 20 to 24. In 1972, 17 percent of all homicides victims and 24 percent of all arrests were in this age group. Teenagers from 15 to 19 account for another nine percent of all murder victims and nearly 19 percent of the arrests. In commenting about such crimes by youths, one author said, "It is as though our society had bred a new genetic strain, the child-murderer, who feels no remorse and is scarcely conscious of his acts." [4]

What is to blame for these heinous statistics? What are the chances that this trend of rising violence can be controlled and reversed? The probabilities are small unless something is done about the moral and socioeconomic environment in which our young people are growing up today in America. One thing is certain. For a considerable proportion of American children and youth, the "culture of violence" is now both a major health threat and a way of life.

We of the medical profession believe that one of the factors behind this violence is televised violence. Television has become a school of violence and a college for crime.

Let us take a look at some of the evidence. The Surgeon General of the United States has said, based on a six-volume study of the problem, that "there is a causative relationship between televised violence and subsequent antisocial behavior, and that the evidence is strong enough that it requires some action on the part of responsible authorities, the TV industry, the government, the citizens."

This report was a twin to the Surgeon General's report on smoking. This report on TV violence, in effect implied, "Warning: The Surgeon General Has Determined That Viewing of TV violence is Dangerous to Your Health."

Much of the report has been clouded in dispute, so that its full impact has not reached society as effectively as it could. Let me point out just one of the disputes. The committee responsible for summing up the evidence gathered said that the 23 studies of the report, done by renowned scientists, provide "suggestive evidence in favor of the interpretation that viewing violence on television is conducive to an increase in aggressive behavior, although it must be emphasized that the causal sequence is very likely applicable only to some children who are predisposed in this direction." This has led critics to downgrade the report and say that violence on TV really only affects those already aggressive individuals, anyway. I would like to say to that, so what? If it makes aggression-prone people more aggressive, that is enough to make me say something should be done about violence on TV. But what is even more alarming is what the Surgeon General said about those predisposed to violence. He said that television can *cause* the predisposition. This point has been overlooked. So, televised violence can increase a child's aggressive behavior, especially if he has a predisposition for aggression. And, in addition to this, the predisposition itself can be caused by the viewing of TV.[5]

Dr. Robert M. Liebert, associate professor of psychology, at the State University of New York at Stony Brook, concluded in an overview of several studies of the report that "at least under some circumstances, exposure to television aggression can lead children to accept what they have seen as a partial guide for their own actions. As a result, the present entertainment offerings of the television medium may be contributing, in some measure, to the aggressive behavior of many normal children. Such an effect has been shown in a wide variety of situations."

And earlier in the report he said, "Experimental studies preponderantly support the hypothesis that there is a directional, causal link between exposure to television violence and an observer's subsequent aggressive behavior." [6]

Let us go beyond the report to other findings. Dr. Albert Bandura of Stanford University set out to determine what happens to a child who watches as aggressive personalities on television slug, stomp, shoot and stab one another. His research team reached two conclusions about aggression on TV: 1, that it tends to reduce the child's inhibitions against acting in a violent, aggressive manner, and, 2, that children will copy what they see. Dr. Bandura points out that a child won't necessarily run out and attack the first person he sees after watching violence on the screen, but that, if provoked later on, evidence suggests that then he may very well put what he has learned into action. The reasons that children do not indiscriminately copy their TV characters is that parents suppress any such learning that they don't consider desireable—that is, the children get punished—and children rarely have access to weapons necessary for showing off what they have learned. "If," says Dr. Bandura, "they were provided with switchblade knives, blackjacks, explosives, six-shooters and nooses, it is safe to predict that the incidence of tragic imitative aggression connected with television viewing would rise sharply."

One of the lessons of television is that violence works. If you have a problem with someone, the school of TV says to slap him in the face, stab him in the back. By aggressive acts, the bad guy, for example, may gain control of grazing land, goldmines, nightclubs, and perhaps the whole town. Not until the very end is he usually punished. And, as in the case of the "Godfather," parts one and two, punishment may never really occur. Because most of the program has shown how well violence has paid off, punishment at the end tends not to have much of an inhibitory effect.

"From these findings," Dr. Bandura says, "we can conclude that if children see the bad guy punished, they are *not* likely to imitate spontaneously his behavior. But they do acquire—and retain—concrete information about how to behave aggressively, and punishment of the bad guy does not make them forget what they have learned. They may put into practice this knowledge on future occasions if they are given adequate instigation, access to the necessary weapons and the prospect of sufficiently attractive rewards for the successful execution of the behavior."[7]

Other studies have shown that viewing violence blunts a child's sensitivity to it.[8] They become jaded to violence on the screen. They condition themselves to avoid being upset by the gougings, smashings and stompings they see on TV. If they *did* get involved, their emotions could be shattered.

What about the long-term effects of violence on TV? Researcher D. J. Hicks found that even eight months after viewing a violent episode only once, almost half of all the children could act out again what they had seen so long ago.[9] In 1955, Dr. Leonard Eron, head of research for the Rip Van Winkle Foundation, looked into the long-range correlations between a child's favorite television program, the program's violence content and the aggressiveness of the child as reported by his classmates. The project, which covered a span of about 10 years, from age eight to 18, was later picked up by the Surgeon General's study on TV violence. The investigators found a strong correlation between the early viewing of television violence and aggressive behavior in the teenage years. In fact, according to the study, a child's television habits at age eight were more likely to be a predictor of his aggressiveness at eighteen than either his family's socioeconomic status, his relationships with his parents, his IQ or any other single factor in his environment. The report concluded that a preference for violent television at a young age leads to the building of aggressive habits.[10]

As equally alarming as these studies are the findings of researcher George Gerbner, dean of the Annenberg School of Communications at the University of Pennsylvania. He said, "Anyone who watches evening network TV reveives a heavy diet of violence. More than half of all characters on prime-time TV are involved in some violence, about one-tenth in killing." Because of this, TV breeds suspicion and fear. The report said, "People who watch a lot of TV see the real world as more dangerous and frightening than those who watch very little. Heavy viewers are less trustful of their fellow citizens."

To cope with this fear the heavy watcher also gets a thick skin. He becomes conditioned to being a victim. He becomes apathetic to violence. Gerbner concludes with the observation that "acceptance of violence and passivity in the face of injustice may be consequences of far greater social concern than occasional displays of individual aggression."[11]

So, we have a two-edged sword. Television violence tends to make some people more violent, and others it makes more willing to accept violence as a way of life.

All in all, 146 articles in behavioral science journals and related reports, representing 50 studies involving 10,000 children and adolescents from every conceivable background, all showed that viewing violence produces increased aggressive behavior in the young.[12]

The accumulation of evidence suggests, as you have heard, that children will copy TV violence, that they often do *not* do so because of parental control and lack of access to weapons, that TV teaches a child that often violence succeeds and that problems can be solved by violence, that viewing TV violence blunts sensitivity to violence in the real world, that children remember specific acts of TV violence, and that preferring violent television at an early age leads to more aggressive teenage behavior.

What happens when these children grow up? There should be further studies on this. In-depth studies. What happens when these children grow up and no longer are under parental control, when they are conditioned into thinking that violence works, and when they have a diminished sensitivity to violence? What happens to these children when they grow up and *do* have access to weapons? What happens when they grow up in a world apathetic to violence?

Is it any coincidence, then, that our real world is looking more and more like the violent world of television? Sadistic, ingenious murders, hijackings, kidnappings, ransoms—news reports are sounding like TV plots. Many of us are questioning whether this resemblance is more than coincidental. In fact, a surprising number of bizarre crimes have been committed by young people who admit they were influenced by television.

There is no doubting the power of TV. Possibly no other innovation of the twentieth century has so affected our daily lives. More than cars, planes, radios, movies, and appliances, TV is the most likely to alter our living patterns. Studies have shown that TV has reduced the amount of time we spend visiting and entertaining friends. We read fewer books and see fewer movies. Leisure time for such things as sports and hobbies has been reduced. We go to bed later because of TV, and we spend less time on household care, play and conversation. It has changed our meal time, and most of us use it as an "electronic babysitter."

The response of the television industry has been generally to uphold the need for violence because violence is what keeps the Nielson ratings up. They say themselves that the network is run by salesmen, and that violence sells.

The TV industry has just recently made some effort to control the content of violence by instituting the "family viewing hour," and for that we applaud the industry. But there are indications that violence is merely being diverted to other hours, not reduced.[13] And the "family viewing hour" is in jeopardy: the concept is being challenged by a Writers Guild lawsuit as censorship and in violation of free speech.

Violence may make money for television, but it should not be made at the expense of our children. And I am not so sure that only violence makes money. The National Citizens Committee For Broadcasting recently released a report saying that according to their ratings the 10 least violent programs are successful network offerings with high ratings.[14]

Based on the evidence that has been developed, the American Medical Association recently authorized a remedial course of action. The AMA will publish a booklet that will emphasize parental responsibility for their children's viewing and will indicate what to look for in terms of suitable programming.

AMA will explore with the National Association of Broadcasters the possibility of convening periodic joint conferences on the impact of TV on children. It will support full funding of research by the National Institute of Mental Health on the influence of television. AMA will urge television stations, in deciding on program content and scheduling, to use violence indexes, which are being prepared by various groups.

We of the medical profession agree with Dr. Liebert when he said that "the most potent, the smoothest way to change television is through even a small minority of citizens who give the impression that they are going to react negatively to content."[15]

That is why the American Medical Association at its recent annual meeting, acting on a resolution introduced by the California delegation, has declared violence on TV an environmental health risk and has asked doctors, their families and their patients to actively oppose programs containing violence, as well as products and services of the sponsors of such programs.

In other words, if you, as a parent, see something on TV that you feel is too violent for your child to watch, turn the TV off or change the channel, and don't buy the products of the firms that support the program through their advertising.

As a representative of the California Medical Association, I want to thank you for allowing me to explain our position, and why we have taken this stand.

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SPECIAL ARTICLE

VIOLENCE, TELEVISION AND THE HEALTH OF AMERICAN YOUTH

ANNE R. SOMERS

Abstract In 1973, 18,032 young Americans, 15 to 24 years of age, died in motor-vehicle accidents, 5182 were murdered, and 4098 committed suicide. The death rate, for this age group, was 19 per cent higher in 1973-74 than it had been in 1960-61, owing entirely to deaths by violence. The largest rise in deaths from homicide during the past two decades was at the ages of one to four. For a considerable proportion of American children and youth, the "culture of violence" is now both a major health threat and a way of life.

One contributing factor is television's massive daily diet of symbolic crime and violence in "entertainment" programs. After numerous studies of television influence on real-life violence, including two major government commissions, the industry is experimenting with a 7 to 9 p.m. "Family Hour" (6 to 8 p.m. Central Time) from which violence, along with sex, has been largely banished. Three industry unions claim censorship and are suing. The medical profession is urged to concern itself with this serious and complex health hazard. (N Engl J Med 294:811-817, 1976)

> Kevin Bullard, a shy boy and a first-rate student in the sixth grade at Grant School, was killed yesterday, stabbed to death by a classmate in a corner of the blacktop schoolyard near Perry Street. His little sister, Kisha, saw it happen. Kevin was 11 years old. His assailant, police said, was 12. . . Capt. Thomas Williams, head of the Bureau of Juvenile Aid, noted that yesterday's stabbing was the second murder of a child by another child in Trenton this month. On Oct. 4, a 14-year-old Monroe Street girl was killed by another girl with a fingernail file. That murder, police said, resulted from a jumprope argument. [*Trenton Evening Times*, October 24, 1975.]

> Fifteen-year-old Clinton I. Johnson left his home in Southeast Washington shortly after noon Wednesday with a $20 bill. He was on his way to the Randle branch of the postoffice about 10 blocks away to purchase a money order for his mother. He never made it to the postoffice. His body was found late Wednesday hanging by a rope from a rafter in a garage. His hands were bound behind his back. School officials and two of his teachers said he was a good student, attended classes regularly, and posed no discipline problems. [*Washington Post*, October 31, 1975.]

> The 15-year-old daughter of a Greenwich executive was found bludgeoned to death this afternoon in a clump of bushes 200 feet from her home in the exclusive Belle Haven estate section here. . . Thomas Keegan, detective captain of the Greenwich police, said Miss Moxley had apparently been killed by a blow to the back of the head in an attack that took place not more than a few feet from the Moxley home. [*New York Times*, November 1, 1975.]

THE YOUTHFUL "CULTURE OF VIOLENCE"

For a considerable proportion of American children and youth, violence has become a major health problem. For an alarming number it is a way of life.

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Supported, in part, by the Robert Wood Johnson Foundation.

In 1973, 18,032 young Americans, 15 to 24 years old, died in motor-vehicle accidents, 5182 were murdered, and 4098 committed suicide.[1]* During the same year, 425 children, five to 14, and 342, one to four years of age, were reported murdered. The actual figures for child murders are assumed to be very much higher. The death rate for ages 15 to 24, from all causes, was 19 per cent higher in 1973-74 than it had been in 1960-61.[2] The rise was entirely due to deaths by violence.

Motor-Vehicle Accidents

As affluence has made automobiles and motorcycles more accessible, the young have increasingly become both victims and agents of traffic accidents. In 1973, motor-vehicle accidents for those 15 to 24 years old accounted for 46.2 deaths per 100,000, a 16 per cent rise from 1963.[3] For every youth killed in a car accident, nearly 40 are injured, an estimated total of 700,000.[4]

Suicides

The rising trend of youthful suicides continues. The rate for ages 15 to 24 more than doubled between 1950 and 1973, to 10.6 per 100,000.[5] In addition, many automobile deaths, recorded as accidental, are considered by many experts to be suicides. According to studies at Baylor College of Medicine in Houston, and in Kansas City, 14 to 15 per cent, one in six or seven of automobile accident fatalities, are suicides, not accidents as reported on death certificates.[6]

Violent Crime

Violent crime in the United States continues to accelerate: murder is the fastest growing cause of death in the United States. The annual rate rose over 100 per cent from 1960 to 1974.[7,8] The homicide rate is roughly 10 times that of the Scandinavian countries. More murders are committed yearly in Manhattan (population of 1.5 million) than in the entire United Kingdom (population of 60 million).[9]

The age group most involved, with the greatest number of both victims and persons arrested, is 20 to 24. In 1972, 17.0 per cent of all homicide victims and an estimated 23.7 per cent of all arrests were in this age group.[10] Teenagers, 15 to 19, accounted for 9 per cent of all victims and nearly 19 per cent of the arrests.

In 1964, in New York City, 1279 children under the age of 16 were arrested for robbery, 131 for rape, and 30 for murder. In 1973, the figures were 4449 for robbery, 181 for rape and 94 for murder.[11] "It is," wrote the author of a soberly documented account of several such youthful crimes and the law's impotence in dealing with them, "as though our society had bred a new genetic strain, the child-murderer, who feels no remorse and is scarcely conscious of his acts."[11]†

The big-city child-murderer is still relatively rare, but youthful skirmishes with the law are becoming almost commonplace. According to a 1966-70 survey of youngsters 12 to 17 years of age by the National Center for Health Statistics almost one youth in five reported having had one or more contacts with the police or juvenile authorities over something he or she had done or were thought to have done.[12] About 44 per cent of 17-year-old boys reported such contact.

Child Abuse

According to the National Center for Health Statistics, the largest rise in deaths from homicide during the past two decades was at ages one to four.[10] More than a million American children suffer physical abuse or neglect each year, and at least one in five die from mistreatment, according to a 1975 study released by the Department of Health, Education, and Welfare, which said the figures represented a "social problem" of "epidemic" proportions.[13]

The pediatric profession, which historically took a leadership role in the improvement of child health and welfare, has again demonstrated a combination of scientific and ethical responsibility by mounting, in co-operation with child welfare agencies, the current crusade against child abuse, culminating in the Child Abuse Prevention and Treatment Act of 1974.

Has it any chance of reversing current trends? It is much too soon to say. But the odds seem highly unfavorable unless something can be done to change the moral, as well as socioeconomic, environment in which American children are growing up today. One of the most relevant and urgent areas of concern is that represented by television's massive indoctrination of both children and adults in the "culture of violence."

VIOLENCE ON TV: MIRROR OR MODEL?

The extent and impact of television's massive daily diet of symbolic crime and violence, in so-called "entertainment" programs, is hard for anyone who is not a heavy viewer to comprehend. According to the annual "Violence Profile," maintained at the Annenberg Institute of Communications, University of Pennsylvania, approximately three fourths of all network dramatic programs during evening prime time (8 to 11 p.m.) and children's dramatic programs on Saturday and Sunday mornings, 1967-73, contained violence as standard content.[14] The proportion declined slightly, from 80 per cent in 1967 to 73 per cent in 1973. However, the rate of violent episodes remained virtually unchanged: about eight per hour. One authority has estimated that "between the ages of five and fifteen, the average American child will view the killing of more than 13,000 persons on television."[15]

Television is not the only entertainment medium to emphasize violence today. Violence, along with sex, pervades the comics, paperback books, and fiction magazines. The film industry is far worse than television in proportion of violence or horror material to total output, and some of the worst violence in television today originates in movies.[16]

The portrayal of murder, mayhem, war, and all kinds of fighting in drama, opera, novels, and painting probably goes back to the beginning of each of these art forms. There are at least two major differences, however, between the usual historical treatment of violence and the typical current situation.

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*Homicide figures reported by the National Center for Health Statistics, based on nationwide reporting from death certificates, are consistently higher than those of the FBI, which are based on voluntary reporting from local law-enforcement agencies.

†"I don't do it for fun. I do it when they hire me," said a 15-year-old Bronx boy describing his career as an arsonist. The boy was among 124 arrested during an eight-week period in 1975 in an effort to stop the epidemic of arson in the South Bronx. More than half were under 16. (J.B. Treaster, "Bronx Boy Says He Set 40 to 50 Fires for $1 Up." *New York Times*, July 16, 1975).

Traditionally, violence was portrayed in a context of high tragedy (the Bible, Greek and Shakespearean tragedy, Tolstoy's *War and Peace*, etc.), fantasy (fairy tales, Wagnerian legends, early cowboy and Indian stories, etc.), or outright slapstick (Marx Brothers, Charlie Chaplin, etc.). It was generally not related to contemporary people or current "real life" situations. By contrast, much of today's movie and television violence is presented in the context of ordinary life and routine problem-solving. The implications for the viewer are very different; his personal identification, either with the murderer, the murdered, or both, is likely to be much greater.

Television is also distinguished from other entertainment media, even movies, by its pervasive impact on children. Historically, few children had access to theater or other dramatic entertainment. For some decades the Saturday afternoon movie was a ritual for many American children. But with the rising cost of movie admissions and near-universal free access to television, it no longer is. Television has become the medium for children. It is difficult to overstate its influence on them.

As of the early seventies, 96 per cent of American homes had one or more television sets.[17] Frequent viewing begins at about the age of three. A recent Nielsen survey reports that preschoolers watch an average of 54 hours a week.[18] This figure means seven to eight hours a day! More than 20 million children two to 17 years old are still watching at 9 p.m., 13 million at 10 p.m., and 5.3 million at 11 p.m.[19] For many children, watching television will consume as many hours from 2 to 6 p.m. as classroom hours for the next 10 years.[19,20]

During the teens, viewing tends to decline. The National Health Survey found, during 1966-70, that youngsters 12 to 17 years old averaged about three hours a day, decreasing slightly with age to an average of two hours and 20 minutes at 17.[21] Several surveys and educational authorities have reported that during the course of the year, children of school age spend as much (or more) time in front of television as in school.

Low-income children spend even more time in front of television than others. One study of children 15 to 17 years old, in the late sixties, found that middle-class youngsters average four hours on Sundays, and low-income youngsters upwards of five to six hours.[22]

It is this almost total immersion in the home setting, combined with the audiovisual impact, that sets television apart from other entertainment media and necessitates special consideration as a risk factor influencing the health of American youth. Television not only offers — it imposes — vicarious experience and psychologic conditioning on our children. In the words of the movie critic, Joseph Morgenstern,

> It's not enough to say that Shakespeare and Marlowe were violent and civilization still survived. Technology has brought a new amplification effect into play. Never before has so much violence been shown so graphically to so many.[23]

In singling out television for special treatment, however, there is no implication that this industry's motivations are any worse than, or generically different from, those of other industries. The difference lies in the nature of the medium and its unique impact on children.

What is this impact? Is the picture of society that children are viewing reasonably accurate or distorted? Does the role of violence in television entertainment conform roughly to that in society in general, or is it exaggerated? In other words, is television a mirror or a molder of social values? If the latter, is the net result positive or negative? Does constant exposure to symbolic violence act as a "catharsis" to aggressive tendencies in children and thus provide a sort of antidote or immunization to real violence? Or does it tend to promote insensitivity or emulation, or both?

Two Major Federal Studies

Numerous studies have tried to answer one or more of these questions. The two most important were conducted by the National Commission on the Causes and Prevention of Violence set up by President Johnson in 1968, under the chairmanship of Dr. Milton Eisenhower (Eisenhower Commission), and the Surgeon General's Scientific Advisory Committee on Television and Social Behavior, set up by Secretary of Health, Education, and Welfare, Robert Finch, in 1969 at the request of Senator John Pastore, chairman of the Senate Subcommittee on Communications of the Senate Committee on Commerce.

Both bodies were established in response to public indignation over the rising tide of violence in the sixties, including the assassinations of President Kennedy, Senator Robert Kennedy, and Dr. Martin Luther King, Jr., the ghetto riots, and campus demonstrations. In composition, scope, purpose, methods, and tone, the two studies were very different. In the view of most authorities, however, the net conclusions were similar.

The Eisenhower Commission was composed of 13 distinguished public and private citizens of both political parties, including Terence, Cardinal Cooke; Dr. Walter Menninger; Justice Ernest McFarland of the Arizona Supreme Court; Judge Leon Higginbotham, United States District Court, Eastern Pennsylvania; Senators Philip Hart and Roman Hruska; Congressmen Hale Boggs and Walter McCullock; attorneys Patricia Harris, Leon Jaworski, and Albert Jenner; and author Eric Hoffer.

The Surgeon General's Committee consisted of 12 behavioral scientists, five employed by, or with close ties to, the television industry. In the selection of the Committee, the networks were permitted to, and did, exercise a veto over seven prospective members, a procedure to which the group as a whole publicly objected and which cast permanent doubt on the objectivity of the entire study. Among those blackballed were Dr. Leon Eisenberg, chairman of the Department of Psychiatry, Harvard University, and Professor Albert Bandura of Stanford University, later president of the American Psychological Association.[24] The full story of this controversial study has been described and analyzed by Douglass Cater, director of the Aspen Institute Program on Communications and Society, and Dr. Stephen Strickland, director of the Washington Office of the University of California Health Policy Program.[25]

The Eisenhower Commission addressed itself to the broad issue of television's influence on children. Its findings were unequivocal.

> Television enters powerfully into the learning process of children and teaches them a set of moral and social values about violence which are inconsistent with the standards of civilized society. What younger children see on television is peculiarly "real" for they are still in the process of learning to discriminate between fantasy and reality. Many adolescents consciously rely on mass media models in learning to play real-life roles. This is especially true of those who are not well integrated into family and school life. Television is a primary source of socialization for low-income teenagers.
>
> A large body of research on observational learning by preschool children confirms children can and do learn aggressive behavior from what they see in a film or on a TV screen. The vast majority of experimental studies have found that observed violence stimulates aggressive behavior rather than the opposite.
>
> We do not suggest that television is a principal cause of violence in society. We do suggest that it is a contributing factor. . . It is a matter of grave concern that at a time when the values and the influence of traditional institutions such as family, church, and school are in question, television is emphasizing violent, antisocial styles of life. . .[26]

In contrast to the Eisenhower Commission, the Surgeon General's Committee focused on a single issue. Was there a demonstrable causal relation between televised violence and aggression in children? The much publicized and much criticized summary of the final report was equivocal.[1] However, virtually all the responsible officials agreed that the numerous research studies had established such a relation. Testifying before Senator Pastore, at the conclusion of the study, Surgeon General Jesse Steinfeld stated, "While the committee report is carefully phrased and qualified in language acceptable to social scientists, it is clear to me that the causal relationship between televised violence and antisocial behavior is sufficient to warrant appropriate and immediate remedial action."[27]

Dr. Eli Rubenstein, vice-chairman of the Committee and staff director, agreed — at the time,[27] and later.[28] No such action developed, however. The industry's insistence on the need for further research prevailed although the funds subsequently made available suggest that the purpose was related more to delay than to additional information.

Two years later, in April, 1974, the tone of the second Pastore hearings was one of rationalization or resignation.[29] The industry's statements of concern and decreasing levels of violence in network programming were accepted pretty much at face value. Dr. Bertram Brown, director of the National Institute of Mental Health, the agency responsible for the continuing research effort, reported then, and again in 1975, on the small-scale, low-key, continuing federal research effort, now representing less than $500,000 a year.* The two major projects involve continued refinement of Dr. Gerbner's "Violence Profile" at the University of Pennsylvania and a separate grant to the Social Sciences Research Council to plan and stimulate related research.

The need for additional research to justify action is questionable. Psychologist Robert Liebert, who had participated in some of the research for the Surgeon General's Committee, and his colleagues at the State University of New York, Stony Brook, summarized the situation as of 1973:

> The quibbling is unwarranted. On the basis of evaluation of many lines of converging evidence, involving more than 50 studies which have included more than 10,000 normal children and adolescents from every conceivable background, the weight of the evidence is clear: The demonstrated teaching and instigating effects of aggressive television fare upon youth are of sufficient importance to warrant immediate remedial action.[26]

Which brings us back to the point the National Commission had reached in 1969.[1] But no closer to answering the question, "What action?"

The New "Family Hour"

After the 1974 hearings, the principal initiative shifted to the Federal Communications Commission. In response to the mounting volume of complaints from parents, Congress, and others (in 1972, the FCC received over 2000 complaints about violent or sexually oriented programs, and in 1974, nearly 25,000),[30] FCC Chairman Wiley concentrated on trying to persuade the networks to undertake self-regulation. The concept of a "Family Viewing Hour" emerged and was accepted by the three networks and the National Association of Broadcasters.

The main features include: two hours during the evening — 7 to 9 p.m. Eastern Time, 6 to 8 p.m. Central Time — during which material "inappropriate" to young children will not usually be shown, and "advisories" to warn viewers, both during and after the "Family Hour," of material that might be harmful or offensive.

The new rules went into effect in September, 1975, amid the plaudits of the FCC, and Senator Pastore, and apparently with the approval of the vast majority of adult Americans. According to the FCC,

> This new commitment suggests that the broadcast industry is prepared to regulate itself in a fashion that will obviate any need for governmental regulation in this sensitive area. . .
>
> The industry proposal represents an effort to strike a balance between two conflicting objectives. On the one hand, it is imperative that licensees act to assist parents in protecting their children from objectionable programming. On the other hand, broadcasters believe that if the medium is to achieve its full maturity, it must continue to present sensitive and controversial themes which are appropriate and of interest to adult audiences. . .
>
> It should be stressed that the networks do not view the post-9 PM viewing period as a time to be filled with blood, gore, and explicit sexual depictions. The presidents of all three networks have assured the Commission that there will continue to be restraint in the selection and presentation of program material later in the evening.[30]

A *TV Guide* poll, conducted October 10-12, 1975, by the Opinion Research Corporation, found 82 per cent of adult Americans in favor of the "Family Hour," including 85 per cent of women, 85 per cent Midwesterners, 88 per cent of those in the $10,000 to $15,000 income bracket, and — perhaps surprisingly — 84 per cent of those 18 to 20 years of age.[19]

Industry critics, however, were skeptical from the beginning, suspecting a meaningless public relations gesture. The New York Bureau Chief of *TV Guide* concluded, "While Chairman Wiley called the concept a 'landmark' and Senator Pastore said it was 'a wonderful idea,' hardly anybody, privately, considered it anything but a gentlemen's agreement between Congress, the FCC, the networks and the NAB to take the heat off all of them."[30]

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*Bertram S. Brown, M.D., director, National Institute of Mental Health. Letter to Senator Pastore, April 30, 1975.

The shortcomings of the Family Hour are obvious there is no definition of what does, or does not, constitute "appropriate" family entertainment. As already noted, millions of children watch well beyond the 8 p.m. or even the 9 p.m. limit. The "advisories" could turn into irresistible advertisements for "inappropriate" programs. Afternoon programs and weekend cartoon shows are unaffected.

What actually happened during the first two months may, or may not, have gone "according to script," but it clearly illustrates the difficulty of correcting such a pervasive evil through piecemeal or half-hearted measures. According to *Newsweek*, the networks simply shifted the earlier violence to after 9 p.m., making of the period from 9 to 11 p.m. a "cops-and-robbers ghetto" with no less than 18 crime shows. "At the same time, the flourishing 'adult-sitcom genre' is being confronted with a forced return to the saccharine fluff of the 'Father Knows Best' era'"[31] — or banishment until after 9 p.m.

Predictably, Nielsen reported a 5 per cent drop in the number of sets in use in the early evening.[32] Whether this reduction was due to less sex and violence or just poor shows is not known. In any case, within less than two months, three industry unions filed suit to force the FCC and the three networks to end the Family Hour, claiming censorship and violation of the First Amendment[33] (e.g., *Writers Guild of America, West v. FCC, Tandem Productions v. CBS*). One or more of these cases — important not only for the future of television but for the nation's ability to set safety and cultural standards for its children — is expected to reach the Supreme Court.

VIOLENCE, MONEY, AND FREE SPEECH

The stakes in the "game" of television violence are enormous. On July 9, 1975, Paramount Pictures announced that it had leased to the television networks the rights to 42 recent movies, including "The Godfather" and "The Godfather Part II," for about $76 million.[34] NBC-TV, which paid about $7 million for a single showing of "The Godfather" in 1974, has reportedly paid $15 million for a single run of the two films in television format. According to Dr. Michael Rothenberg, a pediatric psychiatrist, 24 per cent of the television industry's profits come from the 7 per cent of its programming directed at children.[35]

Understandably, the industry is strongly opposed to any new regulation and, at the slightest suspicion of such a move, invokes the First Amendment and charges critics with impending censorship. This attitude has complicated and confused the issue, especially since many of the same people, most concerned about television violence, are also deeply concerned over civil liberties, and with good reason. The two are closely related. Violence is the enemy of a healthy democratic society as it is the enemy of a healthy body. But the suspicion is growing that the censorship issue is probably a red herring.

The Eisenhower Commission said nothing about additional regulation. A recommendation by a Task Force on Consumer Health Education to the 1975 National Conference on Preventive Medicine that Congress establish some form of "reporting mechanism" on television violence for fact-finding and publicity purposes was opposed by an industry spokesman just as strongly as if it had called for censorship.[36] Dr. Bandura was probably correct when he said, "In reality, the industry fears the threat of adverse publicity more than the threat of censorship, and Johnson, an outspoken FCC commissioner, was probably accurate in characterizing many of the disputes in this area as more concerned with profitable speech than with free speech."[37]

One of the major arguments of the defenders of television violence — that virtue almost always triumphs in the end — is no longer true, if it ever was. Who, in "The Godfather," are the "good guys" and who the "bad guys?" We are very close to the idealization of violence. And, year by year, the real world conforms more and more closely to the world of television violence.

The number of warning voices is increasing daily. For example, Anatole Broyard, reviewing Barbara Geld's 1975 book, *On the Track of Murder*, starts, "I had not realized how desensitized I had become to the fact of murder as a result of seeing it so often on television or in the movies . . ."[38]

The *New Yorker*, reviewing some of the spectacular crimes of 1975, including the attempts on President Ford's life, commented,

> Murder of every sort, even as it was universally deplored, was gaining in respectability. An atmosphere of assassination had spread across the country, and in that atmosphere distinctions were blurring and disappearing — distinctions between fame and notoriety, between entertainment and tragedy, between law enforcement and criminality . . . The C.I.A., the S.L.A., the F.B.I., and Charles Manson's family were mingling on our television screens, in our thought, and, it seemed, in the real world, and it was getting harder by the minute to tell them apart.[39]

Even so ardent a defender of civil liberties as Walter Lippmann wrote:

> A continual exposure of a generation to the commercial exploitation of the enjoyment of violence and cruelty is one way to corrode the foundations of a civilized society. For my own part, believing as I do in freedom of speech and thought, I see no objection in principle to censorship of the mass entertainment of the young. Until some more refined way is worked out of controlling this evil thing, the risks to our liberties are, I believe, decidedly less than the risks of unmanageable violence.[40]

Cater and Strickland conclude their study of television violence:

> Admittedly, probing television's effects raises First Amendment concerns. But the issue remains. For television programming goes to one of society's most urgent problems — how it educates its youth. From the earliest days of the Republic, education has been the subject of social management. The solution is not to declare a no-man's land in exploring television's effects on the young, but to develop more enlightened ways of exploration. . . . We cannot avoid "1984" by merely condemning it. Rather our ambitions should be to invent an alternative vision of 1984. The first necessity is to expose our communications system to the bright glare of examination and debate.
>
> The time may be fast approaching, however, when Pastore's "Dutch Uncle" pronouncements and even the threat of license forfeiture may be of little avail. Technology — by cable, satellite, cassette, and perhaps ultimately by fiber optics — promises a fissioning of our communication channels. Increased competition could open the way for greater diversity and choice in television viewing. But it could also push program producers to extend even further the outer limits of audience arousal.[41]

Need for a Broad Epidemiologic Approach

The problem of youthful violence is obviously highly complex and is challenging an increasing number of eminent jurists, educators, social scientists, journalists, and politicians, as well as a few health professionals. Thus far, the answers have baffled liberals and conservatives alike. The liberal orthodoxy, that crime is due largely to poverty and repression, was widely discredited during the sixties, when affluence, civil liberties, and crime expanded simultaneously. On the other hand, a more conservative national Administration and Supreme Court, the election of tough "law-and-order" mayors in several major cities, and the serious recession of 1973-75, did nothing to reverse the rising crime wave, thus undermining the conservative orthodoxy.

The only area where the medical profession has, thus far, taken an active leadership role is child abuse. While it is still too early to know the outcome of such action — epidemiologically rather than ideologically oriented — it could turn out to be the most creative effort of the past decade in this whole area. Otherwise, public policy — stalemated between two discredited ideologies — appears at a loss either to diagnose the situation or to effect any empirical remedy.

And yet something must be done. For as Dr. Arnold Barnett, an MIT mathematician, and his colleagues have demonstrated, the linear projection of current increases in murder rates leads to astonishing levels, with murder probabilities "up to 1 in 12 and life expectancies diminished by more than 3 years."[41] The speed with which retrogressive developments can take place in the volatile American climate is also indicated by another Barnett finding: "In the last eight years [1966-73] the rise in murder rates has more than 'wiped out' the accumulated decline of the previous forty."

Before the Barnett projections could become fact, however, the increasing fear and frustration would, almost certainly, lead to drastic changes in our form of government and in our civil liberties. Thus, the irony that those who invoke civil liberties most loudly in defense of television violence may be paving the way for serious curtailment of such liberties. Violence does not always lead to dictatorship, but violence is always an ingredient of dictatorship and we entertain ourselves and our children with violence at the peril of our political future. Surely, in this situation, the search for the causes and cures of violence merits the same degree of moral and intellectual commitment on the part of the health professions as we are currently devoting to the war on cancer, or once did to the war on tuberculosis.

An epidemiologic approach would also rule out any single-factor cause. In our present state of ignorance, every possible risk factor — physical, demographic, socioeconomic, political, moral, cultural, and, of course, our ineffective system of juvenile criminal justice — should be explored. This paper has concentrated on just one of the many factors — television's indoctrination of children in the "culture of violence" — but it is one in which the medical profession may be able to play an important part by promoting remedial action.

What Can the Profession Do?

The essential first step is general professional acceptance of the role of television violence as a risk factor threatening the health and welfare of American children and youth and official organizational commitment to remedial action. Recent publication of Dr. Rothenberg's brilliant "call to arms" on this subject[36] was an important beginning.

Next, it is essential that the American Medical Association and other organizational spokesmen for the profession make their views known to the industry — both to the networks and local stations, to the FCC, and to federal and state legislators, especially the two responsible committees of Congress.* The approach should be twofold: a reduction of violence in general entertaining programming and support for the concept of the Family Viewing Hour. The primary argument for the latter is not that it will save children from exposure to violence; it will not. But its very existence commits the industry to values other than commercialism and may force them, and the rest of us, to come up with some positive guidelines for realizing television's enormous positive cultural and educational potential.

A few braver-than-average psychiatrists, pediatricians, and physicians interested in preventive medicine, communications, behavior change, and national policy for health promotion may be sufficiently challenged to devote their major efforts in the next few years to help formulate such positive guidelines and to produce some experimental programs of this type.

Perhaps most important of all, individual practitioners, especially those dealing with children, adolescents, and young parents, can try to help them understand and minimize the television risk factor. Two respected organizations, the Boston-based Action for Children's Television (ACT)† and San Francisco's Committee on Children's Television, Incorporated,‡ have issued guides to children's programming, guides that, in the words of Dr. Rothenberg, "should be available in every doctor's office, hospital clinic, and child health station."

To some leaders of the medical profession, as well as individual physicians, the call to involvement in the problem of violence may seem unreasonable. But it is worth remembering the circumstances that led to the birth of pediatrics in this country. In the latter part of the 19th century, in the midst of an epidemic of infant mortality, infanticide, and child abuse, far worse than the present one, it gradually dawned on physicians and public officials alike that a high infant death rate was not an act of God but evidence of human weakness, ignorance, and cupidity, and could be corrected. There was also the growing recognition that, in the words of the poet Wordsworth, "The child is father of the man."

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At the turn of the century, Dr Abraham Jacobi, founder of the American Pediatric Society, made clear the profession's willingness to assume a heavy burden

> The young are the future makers and owners of the world. Their physical, intellectual, and moral condition will decide whether the world will be more Cossack or more republican, more criminal or more righteous. For their education and training and capacities the physician, mainly the pediatrist, as the representative of medical science and art, should become responsible.[42]

The dramatic decline in the infant and early childhood death rates and the general improvement in the condition of children, after the turn of the century, are tributes to a combination of medical science, technologic progress, enlightened public policy, and human courage. The same combination is now needed for an attack on this new risk factor — pollution of the mind, — which has contributed to an epidemic of youthful violence, an epidemic that seriously threatens the health of American youth.

I am indebted to Philippa Chapman, research assistant, for assistance.

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Special Communications

Effect of Television Violence on Children and Youth

Michael B. Rothenberg, MD

• One hundred forty-six articles in behavioral science journals, representing 50 studies involving 10,000 children and adolescents from every conceivable background, all showed that violence viewing produces increased aggressive behavior in the young and that immediate remedial action in terms of television programming is warranted.

Four major issues are covered:* effects on learning, emotional effects, the question of catharsis, and effects on aggressive behavior. The research findings regarding each of these issues are summarized, as well as the controversial 1972 Surgeon General's report, *Television and Social Behavior.

The time is long past due for a major, organized cry of protest from the medical profession in relation to what, in political terms, I consider a national scandal.

(*JAMA* 234:1043-1046, 1975)

AS A people, we Americans are not unaccustomed to violence. Its thread is woven into the entire fabric of our history, from frontier lawlessness through Chicago gangsterism to presidential assassination. Consider the following statistics, printed on the editorial page of the Oct 12, 1974, issue of the *San Francisco Chronicle*.

> There are an estimated 200,000,000 guns in the United States, which averages out to one for almost every man, woman and child in the country. A new hand gun is sold every 13 seconds and used ones are traded at the rate of one every 30 seconds. Five million new ones come off assembly lines every year for civilian purchase.
>
> Every four minutes someone is killed or wounded by gunfire. Every three minutes someone is robbed at gunpoint.

On the basis of Nielsen Index figures, the average American child will have viewed some 15,000 hours of television by the time he has been graduated from high school, as compared with his having been exposed to some 11,000 hours of formal classroom instruction. He will have witnessed some 18,000 murders and countless highly detailed incidents of robbery, arson, bombing, forgery, smuggling, beating, and torture—averaging approximately one per minute in the standard television cartoon for children under the age of ten. There is an average of six times more violence during one hour of children's television than there is in one hour of adult television.

Twenty-five percent of the television industry's profit comes from the 7% of its programming directed at children. While the Code of Hammurabi in 2250 BC made selling something to a child or buying something from a child without power of attorney a crime punishable by death, in 1975 AD our children are exposed to some 350,000 television commercials by the time they reach age 18, promising super-power, sugar-power, toy-power, and kid-power.

Finally, against this backdrop, consider these words of Walt Whitman:

> There was a child went forth every day,
> and the first object he look'd upon, that object he became,
> and that object became part of him for the day or a certain part of the day
> or for many years or stretching cycles of years.[1]

The Issues

The literature describing research on the effects of television violence on children has been growing steadily in quantity and quality for the past 25 years. Almost all of it has appeared in social and behavioral science publications, with remarkably little representation in medical journals. Because so much of the research done in this area uses Bandura's[2] social learning theory as at least part of its conceptual framework, we should remind

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ourselves that this theory states that role models act as stimuli to produce similar behavior in the observer of the role model. This behavior is learned by being imitated, rewarded, and reinforced in a variety of ways. Responses produced often enough and over a long enough period of time maintain the behavior. Bandura outlines three steps necessary for this process: *exposure* to the stimulus, *acquisition* of the "message" being transmitted by the role model, and *acceptance* of that "message."

For practical purposes, I have listed in the references to this article only nine recent reviews of the literature on this subject.[3-11] Because it outlines so succinctly what the vast majority of these well-designed and statistically significant studies conclude, I would like to concentrate on Richard Goranson's "A Review of Recent Literature on Psychological Effects of Media Portrayals of Violence."[11] Goranson identifies four major issues:

1. **Effects on Learning.**—Are children likely to learn and remember new forms of aggressive behavior by watching the kind of violence presented in the mass media? What are the conditions, if any, that encourage the actual performance of aggressive acts learned through the media?

2. **Emotional Effects.**—Does the repetition of violence in the mass media result in a decreased emotional sensitivity to media violence? Is a decreased emotional sensitivity likely to have any implications for the probability of actual aggressive behavior in real-life situations?

3. **The Question of Catharsis.**—Does watching the kind of aggression shown in the media result in "aggression catharsis"—a "draining off of aggressive energy"? Does the observation of pain, horror, and suffering result in catharsis?

4. **Effects on Aggressive Behavior.**—Are there any conditions of observed violence that can serve either to inhibit or to facilitate aggression?

Here is a summary of the research findings regarding each of these issues:

1. Novel, aggressive behavior sequences are learned by children through exposure to aggressive actions shown on television or in films. A large proportion of the aggressive behaviors learned by observation are retained over long periods of time if the responses have been practiced at least once. The following conditions encourage the actual performance of aggression: a similarity between the observed setting and the viewer's real setting; when the observed aggression "worked"; when it wasn't punished; and when it was the favored and most frequent method used to attain goals.

2. There is a decreased emotional sensitivity to media violence, as a result of the repetition of violence in the mass media. Classical desensitization takes place, as practiced in modern behavior therapy. There is a decreased aggression anxiety and an increased ability to be violent with others.

3. The original studies of Feshbach,[15] which purported to demonstrate "aggression catharsis," have never been replicated and have been disproved by a number of other studies. These other studies have shown the opposite of catharsis, ie, an increase in the viewer's subsequent aggressiveness. There has been no evidence that the observation of pain, horror, and suffering results in catharsis. Goranson speculates that the persistence of a belief in the aggression catharsis notion may stem from a misapplication of Aristotle's original concept of catharsis, which applied only to the "tragic" feelings of grief and fear that could be discharged through active expression by the audience during the performance.

4. Aggression can be inhibited by (1) reminders that the aggression was morally wrong in terms of the viewer's own ethical principles and (2) an awareness of the bloody, painful aftermath of aggression.

Aggression can be facilitated by (1) the cue properties of available targets, ie, stimuli in the postobservation period that have some association with previously observed violence—an association between the victim of the observed violence and the target of the viewer's aggression—and (2) the general state of arousal of the aggressor, eg, when, in experimental settings, the subject is verbally attacked and then exposed to film violence, he later is more aggressive than one who wasn't attacked before being exposed to film violence.

Surgeon General's Report

Television and Social Behavior—A Technical Report to the Surgeon General's Scientific Advisory Committee on Television and Social Behavior was published in 1972. This five-volume report, summarizing the results of 23 separate research projects, comes to the same conclusions as Goranson did in 1969—and as researchers did as far back as 1950. Why, then, does so much controversy persist about this Surgeon General's Report?

The controversy arises from the sixth volume of this report, a summary volume written by the Scientific Advisory Committee. It is important to note that when this 12-person committee was being formed, a list of 40 social and behavioral scientists who had been recommended to the Surgeon General's office by the academic community for membership on this committee was presented to representatives of the television industry. The television industry representatives "blackballed" the seven of the 40 listed scientists who had the most outstanding reputations and work in the field of violence research. These seven were replaced by five television network executives. In addition, there was enormous political pressure on the Scientific Advisory Committee to produce a unanimously signed document. As a result, the summary, while it concludes that a causal relationship between violence viewing and aggression by the young was found, is worded so as to lead to misunderstanding. And the *summary* of the summary is flatly misleading, repeatedly using words such as "preliminary," "tentative," and "however" as qualifiers for statements concerning this causal relationship.

Liebert et al,[7] who did some of the research for the Surgeon General's Report, published a book in 1973 in which they offer a painstaking and brilliant review of this entire subject and of the Surgeon General's Report itself. They point out that 146 published papers representing 50 studies—laboratory studies, correlational field studies, and naturalistic experiments—involving 10,000 children and adolescents from every conceivable background all show that violence viewing produces increased aggressive behavior in the young and that immediate remedial action in terms of television programming is warranted.

Other Issues

There are a number of other issues involved that are not central to our concern here with the effects of television violence on children and youth. They deserve at least to be listed: the relationship of child development issues to the content of current television programs (in a word, *none*); the racial, sexual, child, and adult stereotypes portrayed on television; and the effect of television commercials on children's eating habits (an average of 23 commercials an hour, some 60% of which advertise sugar-coated cereals, cookies, snacks, and candy).

The FCC and the NAB

The National Association of Broadcasters (NAB) has a television code that states in part:

> Television is seen and heard in every type of American home. These homes include children and adults of all ages, embrace all races and all varieties of religious faith, and reach those of every educational background. It is the responsibility of television to bear constantly in mind that the audience is primarily a home audience, and consequently that television's relationship to the viewers is that between guest and host. . . . By law the television broadcaster is responsible for the programming of his station. He, however, is obligated to bring his positive responsibility for excellence and good taste in programming to bear upon all who have a hand in the production of programs, including networks, sponsors, producers of film and of live programs, advertising agencies, and talent agencies. . . .
>
> Television and all who participate in it are jointly accountable to the American public for respect for the special needs of children, for community responsibility, for the advancement of education and culture, for the acceptability of the program materials chosen, for decency and decorum in production, and for propriety in advertising. This responsibility cannot be discharged by any given group of programs, but can be discharged only through the highest standards of respect for the American home, applied to every moment of every program presented by television.
>
> In order that television programming may best serve the public interest, viewers should be encouraged to make their criticisms and positive suggestions known to the television broadcasters. Parents in particular should be urged to see to it that out of the richness of television fare, the best programs are brought to the attention of their children. . . .
>
> The presentation of techniques of crime in such detail as to invite imitation shall be avoided. . . . Violence and illicit sex shall not be presented in an attractive manner, nor to an extent such as will lead a child to believe that they play a greater part in life than they do.
>
> Racial or nationality types shall not be shown on television in such a manner as to ridicule the race or nationality.
>
> Television broadcasters should exercise the utmost care and discrimination with regard to advertising material, including content, placement and presentation, near or adjacent to programs designed for children. No considerations of expediency should be permitted to impinge upon the vital responsibility towards children and adolescents, which is inherent in television and which must be recognized and accepted by all advertisers employing television.

On the basis of the evidence presented, one can only conclude, as did Liebert and colleagues, that the NAB code "appears to be just a public relations document never intended to guide actual practices." Indeed, on at least one documented occasion in 1963, when the Federal Communications Commission (FCC) attempted to control excessive commercialism in television by suggesting that the NAB's own code be used to set the guidelines, the NAB opposed the plan of using its own code and actually organized committees in each state to lobby against it!

In 1968 a consumer organization, Action for Children's Television (46 Austin St, Newtonville, MA 02160), was formed. It was largely through the efforts of this organization and other consumer groups that the FCC developed some new guidelines for children's television in November 1974. All broadcasters are supposed to be in full compliance with these new guidelines by Jan 1, 1976, but there is no evidence from current programming or from announcements of fall 1975 programming that any substantive move toward such compliance has been made.

Some Recommendations and Comments

It is important to remind ourselves that *prosocial* behaviors can also be produced and encouraged by television. The best known example of this is "Misterogers' Neighborhood." There are a number of others, such as "Call It Macaroni," produced by Westinghouse in New York, which takes a group of children to a different part of the country from the one in which they live and teaches them something they have never known or done before; "Big Blue Marble"; "Rainbow Over Seven"; and "Fat Albert and the Cosby Kids."

It would seem to me that the time is long past due for a major, organized cry of protest from the medical profession in relation to what, in political terms, is a national scandal. Such an outcry can and should be accompanied by specific recommendations, based on sound child development principles and the hard data already available to us from 25 years of investigation of the relationship of television violence and aggressive behavior in children, for new kinds of television programming for children and youth.

San Francisco's Committee on Children's Television, Inc (1511 Masonic Ave, San Francisco, CA 94117), a nonprofit organization established by a racially diverse group of parents and professionals dedicated to improving children's television programs through research and an affirmative, active plan for community participation in broadcasting, has developed a set of *General Guidelines for Selecting Television Programming for Children*. These guidelines should be available in every doctor's office, hospital clinic, and child health station. They are as follows:

1. Does the program appeal to the audience for whom intended? (A program for 12-year-olds should be different from a program for 6-year-olds.)

2. Does the program present racial groups positively and does it show them in situations that enhance the Third World child's self-image? (Who has the lead roles?

Who is the professional or leader and who is the villain?)

3. Does the program present gender roles and adult roles positively? (Are the men either super-heroes or incompetents? Are the women flighty and disposed to chicanery? Are teenagers portrayed with adult characteristics?)

4. Does the program present social issues that are appropriate for the child viewer and perhaps are something a child can act on at a child's level? (Litter versus atomic fallout, or pet care versus saving wolves.)

5. Does the program encourage worthwhile ideals, values and beliefs?

6. Does the program present conflict that a child can understand and does it demonstrate positive techniques for resolving the conflict?

7. Does the program stimulate constructive activities and does it enhance the quality of a child's play?

8. Does the program separate fact from fantasy? Does it separate advertisements from program content?

9. Does the program present humor at a child's level? (Or is it adult sarcasm, ridicule or an adult remembering what he thought was funny from his childhood?)

10. Does the program have a pace that allows the child to absorb and contemplate the material presented?

11. Does the program have artistic qualities?

12. Has your child seen an appropriate amount of television for the day? (Or is it time to turn off the set?)

Children have neither money nor the vote. We, as parents and as professionals, must be their advocates or they shall have none, for they are certainly no politician's constituency.

As Williams and Crane[14] have said, "To be silent is to acquiesce, and it is clear that, if we truly care about our children, we cannot be silent."

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AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 38
(A-76)

Introduced by: California Delegation

Subject: Violence on TV: An Environmental Hazard

Referred to: Reference Committee E
(P. John Robechek, M. D., Chairman)

→ adoption as amended

Whereas, There is ample evidence to document an increase in the death rate of young Americans due to violence; and

Whereas, An important contributing factor to the "culture of violence" is television's massive daily diet of symbolic crime and violence in "entertainment" programs; and

Whereas, This is an enormously complex problem for which there is no simplistic solution; therefore be it

RESOLVED, That the House of Delegates of the American Medical Association:

1. Declare its recognition of the fact that TV violence is a risk factor threatening the health and welfare of young Americans, indeed our future society.

2. Commit itself to remedial action in concert with industry, government and other interested parties.

3. Encourage all physicians, their families and their patients actively to oppose ~~to boycott~~ TV programs containing violence, as well as products and/or services sponsoring such programs.

REPORT OF THE BOARD OF TRUSTEES

Report: N
(A-76)

Subject: Television Violence

Presented by: Raymond T. Holden, M. D., Chairman

Referred to: Reference Committee E
(P. John Robechek, M. D., Chairman)

Since the publication of a special communication in JAMA on December 8, 1975 by Michael B. Rothenberg, M. D., on "Effect of Television Violence on Children and Youth," there has been considerable discussion concerning medicine's appropriate role in this problem area.

Television violence is a complex problem. It requires the concerted attention and effort of a variety of individuals and groups, including the medical and other professions, parents and parent surrogates, all segments of the broadcasting industry and the Federal Government.

These forces, working together and understanding each other's roles, can make progress in identifying and curtailing the use of more harmful types of TV violence, in discouraging the viewing of violence especially by those most susceptible, and in promoting the development of wholesome and positive programming for children.

In his article Dr. Rothenberg declared that the content of TV programming for children is far more violent than it is for adults, and he called upon organized medicine to sound a cry of protest and to make specific recommendations "for new kinds of television programming for children and youth."

Subsequently a group of consultants, after reviewing the Rothenberg article and other pertinent material, concluded that there are legitimate reasons for medicine to express concern and take affirmative action, even though they found a wide divergence of opinion among investigators on the significance of the effects of violence portrayals.

Based on this report, the Board of Trustees at its meeting May 11-15, 1976, authorized:

(1) Appointment of an ad hoc committee to evaluate new research in this field and to recommend ways in which the medical profession and others can appropriately respond to findings which appear to be valid.

(2) Publication of a booklet, to be made available to physicians for distribution to patients, that would emphasize parental responsibility for children's viewing and indicate what parents should look for in terms of suitable children's programming.

(3) Exploration with the National Association of Broadcasters of the possibility of convening periodic joint AMA-NAB conferences on the impact of TV on children. Such conferences would assess the current status of children's programming, identify problem areas and arrive at mutally acceptable recommendations for improvement.

The Board also recommends that the AMA:

(1) Support full funding of research by the National Institute of Mental Health on the influence of television. Funding should include the training of manpower in all appropriate disciplines to perform high quality investigations. Priority should be given to objective and applicable measurements of television violence and its effects, and to the elucidation of how and to what extent various types and degrees of television violence affect children adversely.

(2) Encourage physicians to emphasize to parents their responsibility in taking an interest in their children's viewing habits and in helping them be selective. Such admonition may be given by physicians in their direct contact with patients; in public appearances, including those on radio and TV shows; and in dealings with community organizations, including school boards. Appropriate channels for conveying this type of information to prospective parents are courses in parenting which are being incorporated in some high school curricula.

(3) Urge television networks and independent stations, in deciding on program content and scheduling, to utilize indices of violence as they are developed. The Federal Communications Commission also should be requested to use such indices, or their methodology, to identify trends in portrayal of violence, as well as to measure the violence content of individual programs. Such indices are now being developed by George Gerbner, dean of the Annenberg School of Communication at the University of Pennsylvania, and by the Social Science Research Council. Both are receiving support from the National Institute of Mental Health. Until indices are perfected, television networks and stations should be urged to use a designation such as "parental guidance suggested" on all programs which contain episodes of violence that may have an adverse effect on some children.

In communicating these suggestions to the television industry, the AMA should acknowledge the sincere efforts which have been made by several segments of the industry to reduce violence and improve programming for children.

Fiscal Note: $ 1,500*- ad hoc committee
$10,000 - joint conference
$12,000 - publication of booklet (these funds are expected to be recouped through the sale of the booklet)

Mr. VAN DEERLIN. Thank you, Dr. Elmendorf.

Were you a part of the California delegation that persuaded the national convention of the AMA to adopt this program?

Dr. ELMENDORF. Yes, sir. As a matter of fact, I was the original author, along with Brad Cohn, of San Francisco, who wrote the resolution which we introduced, which was endorsed by the council of the California Medical Association and the delegation from California to the AMA, and was then unanimously accepted by the house of delegates of the American Medical Association.

Mr. VAN DEERLIN. Have you, in your testimony, Doctor, covered completely the scope of that resolution? Have you given us everything that the resolution covered?

Dr. ELMENDORF. I think essentially that I have. The "whereases" in a resolution usually gives some background, and I have gone over those in my paper.

I might add that we recognize that this is an enormously complex problem, and that there is no simplistic solution; that we are very much concerned, along with the producers and people that you have heard this morning, about any infringement on freedom of speech, on violation of our constitutional rights.

We believe that we have proposed an answer which does not involve Government directly. We believe that the unit of society, after all, is the individual, and that individual action in individuals are the strength of our society, and that if we can persuade people and encourage them to develop some method of acting in what we construe to be a more responsible manner, that that, in itself, will effect a change.

Mr. VAN DEERLIN. Do you have a copy of the resolution that we could include in the record of the hearings?

Dr. ELMENDORF. Yes, sir, I do.

Mr. VAN DEERLIN. All right. We would like to accept that for the record.

Dr. ELMENDORF. I also have a copy for you attached to this document, and Dr. Pearce has a copy of it. You will receive more copies, I presume, shortly of Anne Somers' article in "The New England Journal of Medicine," of April of this year, which actually was the motivation that caused me to take some action in this matter.

Mr. VAN DEERLIN. We will need to accept that for the committee's files, certainly; whether or not for the record would depend—that is, for the transcript of the hearings—would depend upon its length.

Dr. ELMENDORF. I would like to point out that the American Medical Association, before our meeting in Dallas in June, had already taken some action in this matter, and I would like to include a report of its actions preceding that meeting, which are in effect at this time, and will give you kind of an overview of our total position.

Mr. VAN DEERLIN. Thank you.

Did psychiatrists play a lead role in formulating this position, or was this done by general practitioners?

Dr. ELMENDORF. I have to report to you, in all honesty, that the only opposition at the meeting of the American Medical Association, which I encountered, was from the psychiatrists, and their position was that they felt that the evidence was inconclusive, and that they did not wish to take action at that time but to study the matter further.

I persuaded the House of Delegates that their position was incorrect.

Mr. **Van Deerlin**. In the face of opposition by psychiatrists, on what sort of disciplines, medical disciplines, was the reliance placed? Were there any specialists who took part in this? I am just trying to find out, within the association, from what direction came the motivation, the emphasis and the call for action?

Dr. **Elmendorf**. I think that I have to describe the action that occurred as one that apparently came upon the participants somewhat suddenly; that it is a rather strong stand, in essence, to ask for a national boycott, or a national opposition to something that is a way of life, and that, as such, it was difficult for this particular group to accept that.

Now, the evidence that I have cited to you primarily comes from psychiatrists and from behavioral scientists and from the Surgeon General, and my statements are adequately documented here. The credibility of my statement, of course, relies upon the credibility of the books, the papers and the publications of these gentlemen and their studies, and that will be part of your own determination.

Mr. **Van Deerlin**. You, I presume, had some legal counsel within the association at the convention where this was adopted? Was there any concern, for example, over the forthright call for a boycott of advertisers?

Dr. **Elmendorf**. Yes; there certainly was discussion on that point, and you will note in the copy of the resolution that I give to you that I crossed out the word "boycott," which was used in my original resolution, and substituted, at the suggestion of our students in our delegation, the words "actively to oppose," feeling that they carried out somewhat the same strength, without quite so much inflammation.

Mr. **Van Deerlin**. Then your statement, Doctor, at the bottom of page 13, went beyond what the AMA resolved?

Dr. **Elmendorf**. No.

Mr. **Van Deerlin**. Because you advise that we not buy the product of the firms that support the program through their advertising.

Dr. **Elmendorf**. That is correct. That statement on the bottom of 13 is taken directly from the resolution, which was unanimously adopted.

Mr. **Van Deerlin**. But it doesn't matter whether you use the term "boycott" or not. You have called for a boycott.

Dr. **Elmendorf**. Well, it does make a difference if you are pleading your case before 250 doctors.

Mr. **Van Deerlin**. Well, all I can say is that 250 doctors are easily fooled if they think that this is not calling for a boycott.

Dr. **Elmendorf**. All right. I would be happy to have you call it a boycott, but it is a boycott in that it asks for individual action of individuals involved, of our individual members of our society. It is asking for them to make their own judgments, to develop their own guidelines.

Surely, we will develop a booklet and try to help them define violence, draw their guidelines for action up, but to individually take their own action, and we believe that if such an action occurs that effect a change in the Nielsen ratings, it will effectively change he programing of TV.

Mr. **Van Deerlin**. Mr. Waxman.

Mr. **Waxman**. Thank you, Mr. Chairman.

Dr. Elmendorf, I want to commend you and the CMA and AMA for bringing the public's attention to the problem of violence.

I would like to explore with you a little bit of your testimony. You evidently see a causal link between the violence on television and juvenile delinquency, is that correct?

Dr. **Elmendorf**. I have to tell you that at the present point in time, I am going to beg the question on a cause-and-effect relationship, much as I begged the question on the cause-and-effect relationship of smoking to lung cancer at one point in time, but I do believe that—what I did was I quoted to you individuals who do believe that there is a cause-and-effect relationship.

I suggest that the accumulation of evidence is such that one must take seriously this concept. We must decide whether there are coincidences occurring, or whether there is a relationship, and I think that it is an important question for society to decide; a very important question.

Mr. **Waxman**. Do you feel that it is always harmful to watch violence on television? Do you see any value in watching violence on television that might accrue?

Dr. **Elmendorf**. I have found no one in my own discussions, and in searching my own thoughts on the matter, I find no credibility to the suggestion that violence does anyone any good.

Mr. **Waxman**. Mr. Gerber testified earlier this morning, I don't know if you were here, that his stories about police, law enforcement actions that involve violence within the context of the story, are helpful in molding public attitudes toward law and order and the role of law enforcement in our society. Would you disagree with that proposition?

Dr. **Elmendorf**. I can't totally disagree with that concept. I think that part of our way of life in our society is based upon an awareness of the facts of life, and an understanding and enlightenment and education of what the real world is really like, and if "Police Story" is an accurate portrayal of how police action actually occurs, to that extent it is possible that it is beneficial, but I think that again, as the gentleman did earlier, he indicated that things must be taken in their total context.

I am asking the Subcommittee on Communications to look at the total context of society as we have it today, the aggressive behavior that is occurring, the statistics that we have before us, and given the milieu of television and the known violence that occurs on it, if this is not a direct factor.

That is your difficult task.

Mr. **Waxman**. What role do you see that fantasy and escape might play for the mental health of people? Do you dismiss it as not an important factor?

Dr. **Elmendorf**. Well, I personally believe that fantasy is something which we all have. I think it is a fact of life. I think that maturing is a process in which one is able to deal with one's own fantasies in a realistic manner and understand the difference between fantasy and the real world, and although it may be a form of escape for us, possibly even a necessary form of escape, that we are able as mature people to distinguish the difference, whereas it seems to be, as I have described in my paper, that children increasingly tend to be conditioned as to not really knowing what is there on TV and what is the real world.

Mr. **Waxman**. So you think that TV violence has the most detrimental effect on the young, as opposed to the old?

Dr. **Elmendorf**. I think it has a more detrimental effect, in the sense that it is a conditioning factor. It is something—obviously, if our children spend more time watching TV than they do in school, we should be at least as concerned about that curriculum as we are school curriculum, and all of us are involved in school activities and school curricula.

Mr. **Waxman**. Are you concerned about violence on television as a perhaps improper continuing education for adults?

Dr. **Elmendorf**. I am concerned that violence seems to be increasingly a way of life. There are, of course, anectdotes. I tried totally to stay away from anectdotes, because you are replete with anectdotes, but I think that we are becoming conditioned. There is some indication, for example, that people will watch violence and watch people being actually murdered or robbed, or whatever, and not take any part in any way with it, but merely turn the other way; won't report the incident, or whatever, and I think that is in a way kind of a conditioning, and I think it is more likely to occur in young than in adults.

I think that we accept the fact that an adult has the responsibility for his own behavior and can turn the TV off or on, or whatever, and so I don't apply this primarily to adults, but rather to children.

Mr. **Waxman**. If we found that a certain program, or programing, certain kind of programing, had an effect with a very small number of adults who tended then to become violent prone, and therefore violent, do you think that the overwhelming majority of adults should be deprived the opportunity to witness that artistic endeavor because of that fact?

Dr. **Elmendorf**. Well, that is a very difficult philosophical question which really related to the force of any of our legal system. We, in essence, legalize violence to the police and our protection systems, our armies, navies, and so forth, under certain conditions, in order to protect ourselves.

I think that society would have to be convinced that that small number of individuals who were being affected by this type of violence were sufficient to require a constriction of the majority, and that is a very difficult question. I am not prepared to answer it.

Mr. **Waxman**. Well, as you mentioned, these are all very difficult questions, and we most likely will not come up with a solution, because I don't know that there is any one solution, as we try to sort through the conflicting testimony and conflicting points of view and try to decide what, in our own opinions, would be a policy that we would like to see on television, and then of course, faced again with the legal restrictions that those of us in Government, even with our own personal points of view, have definite constitutional limits on what we might ask or impose upon the networks.

Dr. **Elmendorf**. Of course.

Mr. **Waxman**. Thank you very much.

Mr. **Van Deerlin**. Thank you, Mr. Waxman.

Thank you, Dr. Elmendorf, and will you see that those submissions for the record are made available to the staff?

The hearing will resume at 2 p.m.

[Whereupon, at 12:04 p.m., the subcommittee recessed to reconvene at 2 p.m., the same day.]

AFTER RECESS

[The subcommittee reconvened at 2 p.m., Hon. Lionel Van Deerlin presiding.]

Mr. VAN DEERLIN. The subcommittee hearing will resume.

Our first witness for the afternoon session will be Ms. Kathleen Nolan, president of the Screeen Actors Guild, accompanied by the Guild's executive secretary, Mr. Chester Migden.

Welcome to the subcommittee.

STATEMENT OF MS. KATHLEEN NOLAN, PRESIDENT SCREEN ACTORS GUILD, AND CHESTER MIGDEN, EXECUTIVE SECRETARY

Ms. NOLAN. Thank you. Good afternoon.

Mr. VAN DEERLIN. It is nice to have you here.

Ms. NOLAN. Not too many weeks ago, I was a speaker at a cable conference. It was a panel of sorts. There was an FCC Commissioner, and he talked a lot about protecting the public interest.

Then there was the head of a network. He also was interested in what was in the best interest of the public. The cableman really had the public interest at heart, and there solidly followed a dialog so virtuous that I was moved to remark at the closing of the panel, "I have but one question: Who is going to protect the public from those who are protecting the public interest?"

Brash, unnecessarily harsh? I think not. It is merely a comment of the frustration we feel in this community, and indeed, a frustration that has in recent months drawn the creators closer together.

We welcome an opportunity to come one by one to this microphone and share our thoughts, or anger, and hopefully our particular expertise. You see, we believe that our hearing is long overdue. We have been assailed in print and on the floor of Congress in unnecessary grandstand maneuvers, with total disregard for the facts.

I am speaking of comments relating to the so-called family hour, and the creative unions' support of a lawsuit prohibiting it. We have, at the same time, been accused of, quote "Peddling sex and violence for profit, while poisoning the minds of our children and grandchildren," unquote. Well, I would like to set the record straight in this open forum.

The Screen Actors Guild went on record deploring and condemning excessive violence in television programing almost a year before the prime-time censorship, or so-called family viewing hour ever reared its two-faced head. We then went on record deploring censorship because two wrongs never make a right. The cockeyed notion that artists would prefer to engage in gun chases or violent clashes of automobiles, rather than thought-provoking drama, which is a free marketplace for ideas, is ludicrous.

However, we do fight a battle on two fronts. One, the broadcasters; those supreme protectors of the public interest. Well, you see, they want action. Action, where is the action? Action is a eumphemism for violence.

And our public, where are they in all this? Are they really asking for what they get? Well, the ratings, if you can believe them, say "Yes." And the lines at the box office for violence are the longest. They are the most eager.

We are engaged, indeed, in a state of competition with the natural course of events of our time. We cannot do away with the days and its events. We can only offer other temptations.

Howard Rodman is a beautiful writer, and he refuses to contribute to senseless violence in his drama. He said to me the other day:

> Naturalism is man singing himself through his paid and appointed poets, and what do we sing in the times when it won't do to send a child to the store in the twilight? And one Kennedy dies in a car, in a photojournalistic way, while his wife crawls for either help or safety, and another Kennedy dies off-camera, but the killer of the first Kennedy is done in on-camera itself. And then there was Vietnam, and then there is a series of earthquakes and aftershocks; fires, bombings, executions, election rhetoriticans, and on, and on, and on, and numb. Oil-soaked birds and scum-skinned ponds and Boston etched in black and white, as the buses roll and the schools close, and so do the minds of the children.

Now, can we change our society? God help us if we don't try.

Let us confront those who would profit from this state of our Union. Let us lead people through an evolution on television. Give them diversity, choice, role models. We are entertainment, yes. But we are also educators, chroniclers, poets. There is a cultural revolution going on in this country. There is no reason televison should be exempt from joining it. But we must not be dishonest. We can't control; we can only lead. Therefore, we can never accept censorship. Taste, yes. Censorship, never.

And as for the sex part of the sex violence, I think it is absurd to link the two, although the crashing of a car is a subversion of really dealing with the sexuality of television. In my opinion, there is not enough sex on television. But let me clarify. Sex has come to mean a one-dimensional, stereotyped concept which most surely needs correcting. The whole area of sexuality needs to be examined. Sexuality takes place between people. It is embedded in their roles and their relationships.

Sexuality becomes possible, meaningful and desirable through the human beings who are characterized and the action that is plotted. When we see men giving each other respect for being violent, controlling, unemotional; when we see women relate to each other only through men; when we see unmarried women primarily as victims; when we see less than 27 percent of the roles for women at all in television; when we see married men primarily as fools and children with asexual parents, I see we are not dealing with sexuality on televison.

You are listening to people eager, willing to share our talents to contribute to growth and change, and we must not be thwarted in our valuable direction. We will persist with the forces against excellence, and together we will all prevail.

Thank you.

Mr. VAN DEERLIN. Thank you, Ms. Nolan.

Mr. Migden, will you proceed?

STATEMENT OF CHESTER MIGDEN

Mr. MIGDEN. Thank you.

These hearings were called on the subject of television violence and obscenity. There are, of course, all sorts of violence involving the TV medium, and with your indulgence, I would like to talk about one of them. Although I realize that what I am about to talk about is not exactly what you had in mind as the main topic of these hearings, I have talked to your staff, and it has been indicated to me that my subject is perfectly proper in this forum.

That television leaves a good deal to be desired is not a shocking statement to any of you. Part of the trouble lies with the networks who, after all, really do the programing. They are the people who bring us reruns, as high as 80 percent, a good part of the year. I don't place all the blame there, however; a good portion falls on the Federal agency which supposedly regulates television in the public interest.

A few weeks ago, the FCC announced that it had rejected a petition supported by nearly all the Hollywood community, which would have limited prime time network reruns to 25 percent.

There are a number of aspects to the matter which have triggered a substantial reaction. Some of this reaction is generated by the decision itself, but frankly, in the main, it is a matter of the pot finally boiling over.

The reaction really stems from a growing disenchantment with the FCC itself; its composition, its methods, its bias, its ineptitude and its lack of decisionmaking in the public interest.

This is strong criticism, and it is fair to ask if it is justified. Let us look at some of the record.

The petition in the rerun case was filed in May 1972. The decision was made in July, 1976. Four plus years is what it took. Justifiable? Not in my view, particularly when no hearings were held, and when Commissioners went around the country discussing the matter and announcing their opposition to the rule in advance of the decision. That is one of the problems. Apparently, Commissioners have no compunction about discussing pending matters any time, any place.

The process is unjudicial, to say the least, and in my view, unprofessional. Imagine judges doing that, and by my standards, FCC Commissioners and their functions are quasi-judicial.

They are openly lobbied, and we all know it. I also find this unacceptable, particularly when the power lies with the industry they are duty bound to regulate. We find decisions without hearings, prejudgment of facts, announcement of decisions in the press before notifying parties; all lacking in even a semblance of due process.

One of the strange aspects of the Commission is what I call their blind side or, to put it another way, their blindness to their own bias.

Let me give you a perfect example. In the rerun case, the decision turns heavily on a Commission view that its function and purview should not be concerned with whether or not there is a vibrant, active or substantial employment pool, which we argue is necessary for the health and creativity of the medium itself. This was all rejected. The FCC says:

> "We are persuaded that it is not this Commission's province to engage in regulatory action, by rule or otherwise, with the purpose, or largely for the purpose, of furthering economic conditions in a particular industry." The issue was a red herring, because the real issue was whether the public interest deserves better than 80 percent reruns.

Nevertheless, their statement that they have no role in furthering the economic conditions of a particular industry is interesting. It should at least be applied to the other side of the argument in the very same case. After all, if the economic health of working men and women is irrelevant in rule making, I would hope that network profits are similarly irrelevant.

Not so with the FCC. From the same decision, I quote: "To the extent the networks themselves would be forced to absorb the increased cost of new shows, rather than reruns, the impact on their profits would have to be considered.

They go on to analyze the network's profits, and then state:

> At first glance, this may appear to absorb the projected costs of new programing but it is appropriate to consider two facts; first, the increased costs would have to be shared approximately equally, and history does not indicate that the profits are shared equally among the networks; and second, network profits have not always been at or near this level and may not remain there. In any event, it appears the rule would have a substantial impact on the profitability of each network.

How extraordinary, after stating that the economic conditions in an industry are not their concern. The impact of reruns on people who earn a livelihood in the field, irrelevant. Network profits, grave concern. Bias? I leave it to you.

It may not be the Commission's province to engage in regulatory action to further economic conditions in the industry, but apparently, it is quite acceptable to keep the status quo to maintain network profits. What could be a more dramatic example of the dilemma the public faces regarding what is the public interest. The public will continue to get reruns, and the network's profits will be safeguarded.

The one serious effort the Commission made to regulate the networks was a predictable fiasco. Prime time access was designed by the FCC to take the networks out of certain prime time hours, to return the time to local stations, and by doing so, create diversity of programing. That was the thing, diversity.

After several years of access time, we see the diversity of programing the FCC meant. Diversity means 57 different varieties of game and animal shows. Was it predictable? Yes. Did they listen? No, of course not.

It is extraordinary to hear the arguments we used to urge the FCC to reject access, all of which were rejected by the Commission, now thrown back at us by the Commission as the accepted reasons for rejecting rerun limitations.

We urge that access would breed less expensive types of material, such as game shows, foreign produced materials, generally lower budgets and a lowering of program quality. The FCC, in the rerun case, suddenly is persuaded by all the reasons they rejected and say that the restrictions would, quote: "Have a rather strong tendency to result in some or many of the above developments."

Apparently, the needs of the moment dictate the logic and reasons to be adopted. That this outfit needs to get its act together is pretty clear to us.

What is to be done about all this?

For one thing, the Commission needs upgrading, in terms of the quality of appointees. Time is past for political favors, political nepotism, or patronage, and the time is past for establishment-oriented Commissioners who are overly protective of the networks. We must have knowledgeable people who represent the public.

Second, an overhaul of administrative procedures is in order, with greater due process involved. Four years to decide a case without hearings is simply not acceptable. Restrictions on lobbying are also desperately needed.

Third, public interest. This vague term that enables the FCC to declare that all it does is in must be defined by someone other than the FCC. We believe that Congress may have to define it for them.

One final word. Somebody has got to get out and say his piece, with candor, and try to do something about it; to create an awareness as to what is happening to our medium, yours and mine. It is supposed to be ours, you know. For giving me the opportunity to speak my piece with candor, and I hope with persuasion, I thank you.

Mr. VAN DEERLIN. Thank you, Mr. Migden.

The two of you are agreed, I assume, in your apprehension over any Government agency imposing its influence in regard to standards of violence or good taste in television programing, is that correct?

Ms. NOLAN. Are you talking about Government intervention or interference? Yes.

Mr. VAN DEERLIN. Well, the FCC, as an agency of Government.

Ms. NOLAN. Yes.

Mr. MIGDEN. That is a form of censorship, in our view. We have never taken the position that the FCC should act in that respect. I notice lately that they, themselves, are using the censorship argument to do nothing, and they are distorting the definition of censorship. They do exercise a good deal of censorship, and I can give you examples of it, in connection with prime time access, for example.

There are subtle forms of censorship, of course. You create an exemption, an exemption, to access by saying a particular type of programing will be exempt. That, in a way, is a form of censorship. It allows documentary programing, or children's programing. It creates a favored position for certain kind of programing that relates to content. They are talking about content. That is a form of censorship.

They have done it; they almost conceded, but in other cases, for example on the rerun issue, which had nothing whatever to do with content; we never said you can't put a particular subject matter on. We said, put new matter on; not of any particular type.

In that regard, they used the spectre of, you are asking us to censor, which is not the case at all.

Ms. NOLAN. Right.

Mr. MIGDEN. So they have a distorted notion of what censorship is. They have no compunction, of course; I am sure you have heard plenty already about the family viewing hour, and their role in it, and that, of course, to us is a highly dangerous procedure; to allow people with that kind of clout to impose a form of censorship.

Mr. VAN DEERLIN. I think you have drawn the distinction there between intrusion on programing and intrusion on an industry decision, as in the matter of the reruns.

Do you have any examples or case histories that any of your members have brought to you about other forms of direct cosensorship over programing, or are your members likely to be in the position of artists who merely do what they are directed to do, and they perhaps are not likely to be aware of any censorship efforts?

Ms. NOLAN. I think that actors are very much aware of censorship, as it has evolved in the so-called family viewing hour concept, in very subtle ways. Certainly, an actor is involved in his or her performance; is certainly tainted by censorship of the script. You cannot fully realize the potential of the character when it is being reduced to pablum many times.

There are specific instances which have been brought to us by actors that have been involved in shows in this time period that feel very strongly that their own creativity is in jeopardy, and I suppose that is another reason why actors became so actively involved with producers and writers in this action, in addition to our own sensibility about censorship.

Mr. VAN DEERLIN. Your members feel that a great deal of what they are working in now is Pablum, as compared with the greater freedom that they enjoyed 3, 5 years ago?

Ms. NOLAN. I think so. I think they are very confused about the state of television right now. We are, in either case, either in a condition of Pablum or in excess. As I stated, I don't think that any actor welcomes being involved in senseless violence, nor do they wecome being involved in situations that are a distortion of reality, unless it is meant to be fantasy.

Mr. VAN DEERLIN. Yes; I think your prepared testimony brought that out rather forcefully.

Has the Guild taken specific positions, as an organization, on any of these topics, on family viewing itself, for example?

Ms. NOLAN. We are a party to the action in the lawsuit in the family viewing hour. I like to call it by its rightful name: Prime time censorship, however. And we also have, as I stated, taken a position quite a long time ago on excessive violence in television.

I believe that the creative community, in recent months, through what one entity called the Interguild Council, which is the Writers, Directors and Actors Guild, have worked diligently to find solutions to the state of television. After all, that is where our members work, and where we can share our talents with the public.

We have not taken any of these actions lightly, either the lawsuit or our involvement in trying to upgrade television. We are constantly at odds with broadcasters and networks. We are constantly trying to make inroads and change ideas together, and I think we will. I think that is the direction that should be taken. I think if the creative community, the creators, the actors, writers, and directors and producers themselves, had control of the medium, and not merely profit-motivated solely, I think you would see quite a different picture on television.

Mr. MIGDEN. Can I get an aura in on this one?

Mr. VAN DEERLIN. Please do.

Mr. MIGDEN. What is disturbing to the creative community, in connection with the family viewing hour, is, I think, twofold. The first element of grave concern was the role that Government played in it, and that, of course, is part of the lawsuit. But there is a secondary concern.

Mr. VAN DEERLIN. Well, this was rather muddied in the evidence that was taken in court, wasn't it?

Mr. MIGDEN. Well, of course, let us not judge what the judge will have to judge. He will have to weigh the evidence.

Our view of the evidence, as we know it, is that not even notwithstanding the ultimate decision, and that is, whether or not it was adequately proven legally, there is no question in anyone's mind, really, that the FCC, particularly the action of the chairman, was excessive in promoting this form of censorship.

Now, be that as it may, I leave that concept for a moment; there is another form of censorship that goes on all of the time, and what concerns the creative community is the way everybody accepts it. The networks have people who are called "censors." They are there. It is their job. They censor openly, and of course, during the early stages of the family viewing hour, the creative community had a very dramatic example of what such people can do, because it went way beyond the subject matter, such as violence.

Thoughts were being censored. Subject matter. Ideas. Concepts. This is what is frightening.

Now, in a society such as ours, so fundamentally rooted in freedom of expression, that interests as powerful as netowrks openly concede that they censor, is of grave concern not only to me, as a member of the creative community, but as a citizen. How far does it go? How long will it take before it begins to seep into news, or anything, when they literally openly admit that they censor?

I have said frequently, and I repeat it here: Little doses of censorship do not work. They cannot work. Once we accept little doses, I am afraid we are done in. Once we begin to chip away at that fundamental concept, I don't think we can come to terms with amounts of censorship. That is my fundamental belief.

Mr. **Van Deerlin**. Mr. Waxman.

Mr. **Waxman**. Thank you, Mr. Chairman.

One of the reasons I was enthusiastic about holding the hearings in Los Angeles was to give an opportunity to the creative community in Hollywood to express their views on this particular subject, and I hope it won't be the end, but the beginning of dialog between those of us in Congress who are concerned about these issues and those of you who work in this field daily.

But you talked about the FCC. Has the Screen Actors Guild ever been consulted by the FCC in its deliberations in establishing rules or in adjudicating various disputes? Have you ever been called upon by the FCC to give your opinion?

Mr. **Migden**. Sort of as experts on a particular subject? Not per se. We receive the same notices of rulemaking that everybody else receives. We have not been called as expert witnesses to advise and consult; not in that sense.

Ms. **Nolan**. We have testified many times before the FCC.

Mr. **Waxman**. When they have hearings where they have testimony?

Ms. **Nolan**. Yes.

Mr. **Waxman**. I assume that, and I know the answer to it, but I assume that you, along with the rest of the production community in Hollywood, were not involved in the meetings that gave rise to the creation of the family hour?

Mr. **Migden**. Hardly.

Ms. **Nolan**. No. No, but I heard about it over a chicken a la king dinner from Commissioner Wiley, when we were both speaking on another, supposedly on another subject, at a conference. Mr. Wiley gave his dissertation on the results of the family viewing hour, and this was long before it ever went to court in Los Angeles, which I find extremely curious.

Mr. **Waxman**. I gather that made an unappetizing dinner less digestible?

Ms. **Nolan**. Chicken a la king, at best, is not easy to take.

Mr. **Waxman**. What role does the screen actor play in creating television work? We know the writer writes the script; we know the producer and director decide exactly how they want the format, and the actor reads the lines, and I gather, breathes life into the character.

Ms. **Nolan**. Congressman, since there are several writers behind us, I could only say to you that more than 50 percent of communication is nonverbal. Therefore, I would say that the actor makes a considerable contribution to any production that he is involved in, and not merely parrots the lines of the writer.

Mr. **Migden**. I think if you ever looked at a script, you would be horrified at how much is left to execution by the director and the actor. That is part of the creative process.

Mr. **Waxman**. So as part of the creative process, and of course I only ask that question to lead to further points that I want to have elucidated——

Ms. **Nolan**. Terrific.

Mr. **Waxman**. So part of this process shows that the actors have some creative control over the work that is on television, but when we talk about censorship, we usually think in terms of the censor at the network, or elsewhere, looking at a script and eliminating words or looking at a scene and trying to change the scene.

Do you find that censorship even extends to the way the actor or actress would portray the role?

Ms. **Nolan**. Oh, I think most definitely it has an influence on the work of the actor. In changing the scene, you have to change the performance. A performance can't go in one direction when the censor has cut the heart out of the direction of the material.

Mr. **Waxman**. I am troubled by a very basic question, and I appreciated your comments related to it. We had testimony this morning; I don't know if you were here, but we had testimony about censorship by virtue of the family viewing doctrine, and Mr. Migden referred to the censorship that existed before family viewing came into effect, and that is the censors that are on duty all the time, I suppose, by the networks themselves, and you object to that censorship.

How should judgment be made over what is fit to be played on television be made? Should someone make some judgments along those lines? Should there be an editorial judgment? Should there be anybody playing that kind of a role, deciding what can and cannot be shown?

Ms. **Nolan**. It depends on how it is approached. I don't think it should be called "censor."

I remember Carroll O'Connor said something at the very outset of the family viewing hour action that we were taking, and he said—

> You know what the problem is. You give a guy an office and you put "censor" on it, and then he feels like he has to justify his position, so he has got to censor a lot. Why don't you let one of those vice presidents over there have a subjob as a censor, and then maybe they wouldn't do so much.

I think that is really true. I think there has always been some form of doctrine at networks, or independent stations, but it has never reached this kind of proportion. I don't think anyone is talking about the elimination of taste. I think what I said early on I still mean; that if you allowed the taste of the creative, the truly creative people to prevail, you would not be in the situation that you are in now, and the public would not be, either.

Mr. WAXMAN. There seems to be an assumption that the networks own the theater, and therefore, they have the final say over what is produced under their auspices.

Should those kinds of decisions be left ultimately to the——

Ms. NOLAN. I am not clear.

Mr. WAXMAN. There is an assumption, not so much of what you said, but there is an assumption that I picked up from earlier testimony that one might not wish to have a Government censor, but the networks, after all, are the ones who have the ultimate say on what goes under their auspices. What are your feelings about this? Should the networks have the ultimate say, and if not, who should have the ultimate say?

Ms. NOLAN. Well, I will say it again. I think the actor, writer, director, producer that is putting together a project should have the ultimate say in what is involved in that project. I don't think that we should allow ourselves to continue to be hoodwinked in this country, that the man or woman that is in power because of virtue of their money power, or their control over our lives, should have final say about what the product is, which is the situation that we have in this community now.

We call it the three stores in town. There are only three stores in town; there are only three buyers, so therefore, you are constantly placating those buyers. They tell us who can write the shows, who can act in the shows. There is a thing called, TV Q Listings, which the networks use, which lists the ratings of actors, and the higher your rating is, the more you are used in television, and then once you are used too much, you are used up, and then you are not used for a long time.

The whole distortion of a basic way of operating in this community is something that we are now trying to deal with.

Mr. MIGDEN. There is an assumption, of course, that if it were not for network "big brother" censorship, that we would have a totally unrestrained society, in which anything would be put on television. I don't believe that is so.

Ms. NOLAN. Actors would never allow it.

Mr. MIGDEN. I don't think the creative community would find suddenly that because there is no network censor that they would put anything in their scripts or in their films and hope to make some kind of capital of that.

Mr. WAXMAN. But you do feel, from your testimony, that there is excessive violence on television. How should that be handled?

Ms. NOLAN. By taking away control from the networks.

Mr. WAXMAN. Does that mean that you feel that violence, excessive violence that is now on television, is due to network pressure?

Ms. NOLAN. Yes. Network pressure, station, independent station pressure, when you are talking about syndication. I am talking about broadcast pressure for that kind of product.

Mr. MIGDEN. Perhaps if we allowed ideas to be portrayed more freely on television, we would have some subject matter other than violence on television. Political satire has become a thing almost of the past. It gets censored out. You dare not say that, and there are complications as a result of that. There are all kinds of ideas that are prohibited. Ideas and concepts are no longer attractive subject matter for television fare. The easiest thing is to just go out and buy another violence-oriented detective type of show. We see it over and over again.

So what do we get? And I am not downgrading it. I think that television should have a proportion of situation comedy, but we get either situation comedy, and it is all formularized, because they require it. It is what they demand. Why? It is what they will buy. It is all they will buy.

Therefore, the creator, the writer, the actor, the director, everybody tries to put themselves in the mold, so that they can earn a living. Otherwise, what else do you do? And that is how it comes about.

The subject matter is not purchased on the basis of its merit.

Mr. WAXMAN. I gather it is purchased on the notion that it is going to do well, and it is going to make higher ratings, and therefore higher profits?

Mr. MIGDEN. Yes. What lowest common denominator can we reach.

Mr. VAN DEERLIN. If the gentleman will yield, another factor here is reaching a young audience, young marrieds, who may be spending more money than other parts of the society, other segments who are a better audience for the advertiser. They might not represent a numerical majority of the viewing public, but they represent perhaps a majority of the dollars that are going to be spent. Is that part of it?

Ms. NOLAN. Well, I would say that they seem to be full of quoting statistics about what the American public wants to see in what we consider to be very small samplings.

As a matter of fact, about a year and a half ago, we did our own survey, in a sense, and we sent to newspapers across the country, in 32 major newspapers across the country, a survey asking the reader-viewer what they wanted to see on television, and we had over 100,000 responses, and the indication was that they wanted to see more women in a position of authority, they wanted to see more realistic relationships depicted on television. They resented the excessive violence, but it doesn't seem that those that are providing the product look at those things, and I know writers that have trunks full of marvelous scripts that we have yet to see on the air, so I also get a little tired of my colleagues, the writers being blamed, because they are most capable of delivering human relationships to the public, but they are just not buying it.

Mr. WAXMAN. The network people say that they show on television what the American people really want to see. If they didn't show those kinds of shows, they wouldn't get the high ratings that they get.

Mr. MIGDEN. How do they come to that conclusion? They come to that conclusion, I have often said, by looking at the ratings and, of course, the ratings come about by virtue of the fact that the American public is largely a captive audience. They watch what they are given.

Ms. NOLAN. But also, you know, my son, when he was six, wanted to play with matches, and I convinced him that that was not a very good thing to do. By the same token, if we are sharing the airwaves;

the airwaves, after all, do belong to the public, then do we not have a responsibility to perhaps take some chances and reduce those kinds of broadcast profits on an individual station basis, or network basis, and begin an evolution process, which I indicated in my testimony, to try to change the kind of fare that people will find more acceptable?

If you keep hitting people over the head with the same thing, then it is what they get used to. I mean, I don't find it acceptable to say that is what people want, so that is what we are going to give them.

Mr. **Van Deerlin**. Do you think that one outlet to encourage diversity might be pay channels?

Ms. **Nolan**. Oh, I definitely do.

Mr. **Migden**. Absolutely.

Ms. **Nolan**. I think that we have a responsibility to upgrade that market; that we have a responsibility to convince those people in cable that they should not go into the cable market with the same kind of profit motives and just who can get "Jaws" the fastest, but there can be diversity of programing. There can be creative programing I think it is one of our big answers.

Mr. **Migden**. See, there you would really have a marketplace of thought, where you would have a means of judging beyond the so-called ratings which, of course, you know, are terribly defective. Everybody takes them for granted, but I have never accepted the fact that this is what the American public watches, if you know what the ratings are. To me, it is a lot of nonsense that they are used as the gospel, and I don't buy it.

But if you had a marketplace, a true marketplace, like in pay cable, you would find out what the American public wants.

I mean, we know, "One Flew Over the Cuckoo's Nest" is a success, because the American public reacted to it, in a way other than they just sat there desperately saying, what do I watch tonight? I am bereft, so it is on. I do some of my best reading in front of the television set.

Mr. **Van Deerlin**. Of course, even with pay channels, someone will be making programing decisions, based on what it was assumed would sell.

Do you have any further questions, Mr. Waxman?

Mr. **Waxman**. Well, let me go back to the question of excessive violence, because so many people are troubled about it, and you say the network shouldn't make the decision; it ought to be with the creative community that produces and directs and acts in these television programs.

If we left it to the creative community and didn't give the decision with the networks, do you feel that the creative community would then, on its own, reduce the amount of violence that we now see in programs?

Ms. **Nolan**. Absolutely. Absolutely. I don't think there is any question about it. You know, there is a difference in what the networks talk about; when they talk about action, they are really talking about violence. When we talk about action, we are talking about action. We have always had action in motion pictures, in theater, and in television. We are not talking about the elimination of cowboys and people chasing people, but there is a difference between action which is justified and character development which is justified, and just senseless violence.

Mr. **WAXMAN**. But isn't there a difference of opinion among those in the creative community over what is necessary violence and what is excessive, gratuitous violence?

Ms. **NOLAN**. Yes, but we can work it out. Give us a chance.

Mr. **MIGDEN**. Perhaps, but let's look at the motivation. Let's look at motivation.

Mr. **WAXMAN**. Well, we had testimony earlier today that said that we would just not have this family viewing, and we could have the network censor and the production people be able to negotiate on a 1-to-1 basis, that they could work it out.

Ms. **NOLAN**. Who said this?

Mr. **WAXMAN**. This was Mr. Tinker and Mr. Burns. They talked about the way things were before family viewing; that the Program Standards person would be involved, but he would also know the general limits of good taste among those in the production community.

Ms. **NOLAN**. I think I indicated that earlier. I think there would always be, or there has generally always been, someone at stations or networks. Once again, it is not in excess. What we are talking about is excesses, when you are talking about these forms of censorship, or excessive violence.

You know, there is a difference. There are fine differences between what we are discussing.

Mr. **WAXMAN**. Well, I think your testimony has been very helpful to me, and I appreciate it very much.

Ms. **NOLAN**. Thank you.

Mr. **VAN DEERLIN**. Thanks to both of you for participating in these hearings.

Mr. **MIGDEN**. You are welcome.

Mr. **VAN DEERLIN**. Our next witness will be Mr. David Rintels, president of the Writers Guild of America, West, accompanied by Mr. Larry Gelbart, executive producer of one of my favorite programs, "MASH."

STATEMENTS OF LARRY GELBART, FORMER COPRODUCER OF "MASH," AND DAVID RINTELS, PRESIDENT, WRITERS GUILD OF AMERICA, WEST

Mr. **GELBART**. Before we read this statement, may I just for the record say I am not the executive producer of "MASH." I am the ex-coproducer of "MASH."

Mr. **VAN DEERLIN**. Did you say "ex"?

Mr. **GELBART**. "Ex." Former.

Mr. **VAN DEERLIN**. Sorry.

Mr. **GELBART**. Because this committee's field of inquiry is large, covering important questions in communications, law, and public policy, and because you have asked us to be brief in our opening remarks, Mr. Rintels and I thought we should limit ourselves to talking about how television programs come into being, what their purpose is, who makes the decisions, and on what criteria.

Then we will be specific about two aspects of programing: Sex and violence, and they are two very different aspects. And finally, we will attempt to answer any questions you may wish to ask us on these or any other matters.

We are speaking with the unanimous endorsement of the Writers Guild of America, West's, board of directors.

We want to being by telling you we are no less concerned than you are about television, and for this reason, we appreciate your coming here to solicit our views on television programing.

Our concerns begin with this: We think the vast majority of programs on television are below the standards both of those who write them and those who watch them. We think the range of what is offered is too narrow. We know that, as writers, we can do better. We know you want to see better.

What, then, is the problem?

The problem, we feel, lies principally with the networks, which control every aspect of programing, and whose concerns are different from yours and ours.

By every aspect, we mean the networks do the following: They decide what programs shall be on the air at all, at what times, and with what formats. They have approval of every creative person on the staff of every one of those shows. No writer, producer, director, or story editor is hired without their consent or stays without thier approval. They see and comment on, and are free to censor or reject, every story premise, every script, every finished program. Each of them have two well staffed departments, programing and broadcast standards, involved in this work. They each have another department, sales, which is greatly affected by the decisions of the other two.

It is important to realize this, because we believe many people operate under a misconception. Many people, especially those who believe there is too much sex or too much violence on television, think that the creative community is responsible.

It is true only that the pencil is in our hands. The networks tell us, rigidly and explicitly, what we can and cannot write, what they will buy and schedule and show, and what they will not.

In other words, if television has too much sex or too much violence, the reason that is so is that the networks want it so. Writers and others are excluded totally from participation in the decisionmaking process, exactly as we were excluded in the creation of the family viewing hour, which was presented to us fullblown, already beyond discussion or questioning, as yet another limiting factor on our right to write and your right to see.

Their control means that for good or for ill, the networks are responsible fow whatever is on the air. Some of their programing is truly excellent. Some is truly not. All we mean to say is that the choice of what goes on resides with the networks.

In this regard, let us talk about sex and violence.

It is very important, at the outset, to separate one from the other. There is explicit violence on TV. There is not explicit sex. We are all at least somewhat clear about what we mean by violence. But by sex on TV, we mean so much, and the least of it seems to the sex act itself. Sex on television means, to a large extent, talk. Talk about homosexuality, talk about abortion, talk about birth control and prostitution and premarital or postmarital relationships. It means jokes and discussions. It means essentially a whole vast area of important human concern.

Some people don't like to hear or talk about any of those subjects. They are made uncomfortable by them. As a writer, I would say to those people, I think you should be willing to listen and talk about all human concerns, but if you are not willing, turn the set off.

You also don't have to let your children watch. I think people make a mistake when they do that, because I don't think there is anything at all on TV which cannot now be watched without embarrassment, even by children. Indeed, I think the opposite is much truer; that TV is not nearly honest enough, or frank enough, about sex; that we should be able to delve far more deeply into the serious social and moral questions which sex raises, and that we could all become richer for that.

We want the right, not just in our own interest, but in the country's, to be able to discuss mature themes on television, to illuminate our concerns and yours. We think more freedom, freedom with responsibility, is the answer, instead of more censorship.

Just to give you one specific example of the type of concerns we have in this area, let us add to Mr. Burn's earlier comments about how the series, "Phyllis" was treated in the family viewing hour this past season.

The writers and producers wanted to do a show concerning the communications gap between mother and daughter. The premise of the show was that Phyllis' teenage daughter was away on an overnight trip, skiing, I believe, and had spent the night in the same room with a young man.

Phyllis was deeply concerned. Had there been sexual relations between them and, far more important for the purposes of the show, how to talk to her daughter about it, and most especially, how to talk about it truthfully. Some people might think there is no more important subject in the country today than parent-child communication.

Here is what CBS did. Initially, they refused to do the show at all. The producers threatened to resign. Finally, CBS offered to compromise on some points, but not the key one, which came at the very end.

The last two lines of the program were supposed to have been Phyllis, having had a heart-to-heart talk with her daughter, clicking her heels as she jumps in the air and saying, in obvious relief, "She didn't do it," and then doing a terrific double take of realization and saying: "Unless she lied."

CBS made them cut that last line: "Unless she lied." And in the process, they reduced a play about communications to a middle-class morality sermon, which ends on the upbeat note that nice girls still don't do it.

So, it seems to us the networks are not wholly comfortable with sex or social change.

STATEMENT OF DAVID RINTELS

Mr. RINTELS. But violence is, in this and other respects, a different matter altogether. Mr. Gelbart and I are not here to defend violence on television. We deplore it. There is far too much of it, it is frequently gratuitous, and most people of good will can easily agree that, even in the face of incomplete evidence, it is harmful, especially to children.

But let us tell you why there is so much of it, and then we can talk about what to do about it.

There is so much violence on television because the networks want it. They want it because they think they can attract viewers by it. They attract sponsors, and affiliate stations welcome it.

There is additionally, hard evidence that the networks not only approve violence on television, they have been known to request it and inspire it. In this connection, we refer you to the testimony of Liam O'Brien concerning the show, "Hawaii 5-O" before the Senate Subcommittee on Constitutional Rights on February 8, 1972, and also to the 1972 report of the Surgeon General of the United States on violence, which states in the technical report, quote:

> To remain in production, a producer must be able to conform to the changing directives of the network. Those producers who are committed to particular artistic and ethical values have trouble remaining in the commercial field.

Writers, on the other hand, as distinguished from networks, generally, though certainly not universally, despise gratuitous violence. They see it used in television as a cheap and easy substitute for other, more meaningful, forms of confrontation.

Violence and cop shows work as a Gresham's Law, driving out quieter and more human drama, not to mention art, politics, science, humanities, history; the whole vast catalogue of human experience which TV now denies us.

Given free choice, we would, virtually all of us, rather write about the human and intellectual and moral concerns we have, rather than solve problems with guns and punches and kicks. We are not given that free choice. We are given, in abundance, cop shows to write for.

All that we believe to be true, do we then believe that violence should be banned totally from television? Absolutely not. We believe that it can be shown, in proportion and where justified by the proper demands of a story. We believe that violence is a part of life, and that television must tell the truth about that.

Alan Alda has given serious thought to questions of violence on television, and we are appending to our statement his thoughts, to which we subscribe totally.

But we reiterate, the main concern we have is that violence must not any longer be allowed to drive out all other programing. It is not a proper substitute for other, better drama. We believe that if the networks replaced most of their violent shows with nonviolent shows, they would be performing a wonderful service in everyone's interest, and something totally consonant with their claim in the family viewing hour case, that they want to make television less violent. We writers certainly won't stand in their way. We have all had too many experiences like this one not to want a change.

Last year, I proposed to a network an episode based on the shooting of Fred Hampton, the Black Panther killed in his bed in Chicago. The network agreed, on the two explicit conditions that the Hampton character not be black in my story, and that politics not in any way be involved. It was all right for a policeman to shoot a young man to death in his bed, if the policeman thought that man had been fooling around with his daughter.

Leave the violence in. Simply rob it of any meaning and importance.

The stakes are high in all of this. Television has enormous audiences and tremendous influence, and therefore it must be responsible. The problems of too much violence, not enough humanity and reality, a refusal to allow the creators to deal seriously and freely with social, economic, racial, political, religious, artistic and other themes in entertainment programing, demand a full hearing.

Lawyers know far better than we the constitutional problems in this area, but there are certain beliefs which the board of directors of the Writers Guild holds which we believe should be the basis for some discussion.

First, we believe unqualifiedly in the first amendment to the Constitution. Congress may make no law abridging freedom of speech. That was a central cause of action in our family viewing hour lawsuit.

Second, we believe that Congress does have the right to encourage, or even demand, diversity in programing. Because television is a limited access medium, unlike the print media, with control vested in the very few, we believe that it is proper to inquire whether the airwaves are being used in the country's best interest. That interest, to us, means diversity, freedom, and access of all people to all kinds of programing. In this regard, we subscribe to Mr. Justice White's opinion for the Supreme Court in the *Red Lion* case.

Third, we think there is a constitutional difference between the Government involving itself in programing, which is properly totally forbidden under the Constitution, and the Government telling its licensees that they must, by law, serve the public interest. We have no objection to a high standard of performance in the public interest being required of everyone who has a license to broadcast.

Fourth, we are fall deeply concerned about the appearance of Government pressure. That, too, is reflected in our lawsuit against the family viewing hour, which we felt was legislation by intimidation.

We feel it is proper to insist that all future discussions involving the public's airwaves be done in public view, with their participation and with our participation. Had we and the public been privy to the closed-door discussions of family viewing hour, we could have discussed our mutual concerns in a positive and healthy manner, instead of being confronted with a solution which, to writers, directors, actors, and viewers everywhere, was seriously flawed.

We want television to be better, which means, to us, that it has to be freer. Twenty years ago Edward R. Murrow said:

> This instrument of television can teach, it can illuminate; yes, and it can even inspire. But it can do so only to the extent that humans are determined to use it to those ends. Otherwise, it is merely wires and lights in a box. There is a great and decisive battle to be fought against ignorance, intolerance, and indifference. This weapon of television could be useful.

Mr. VAN DEERLIN. Thank you. I believe that the restraint against interference with programing stems from the Communications Act of 1934, as amended—not from the Constitution itself, of course, which rather antidates all electronic media.

You promised us that after reading your statement, you would tell us how we could accomplish this. Clearly, the Commission, which has the ultimate responsibility for licensing the use of the public airwaves in the public interest, must base its judgments on something.

Do you have any way out of the forest for us?

Mr. RINTELS. Mr. Van Deerlin, it is a terribly difficult dilemma for anyone, and for a man who is a writer and president of the Writers Guild and has to think first of the freedom of the press and the requirements of the Constitution, the first amendment, to advocate any kind of Government involvement in this area. It is very difficult for me to arrive at the area where I am even willing to discuss it. I think it is very difficult for writers, generally, to arrive at that place, and the only reason that we are willing to discuss it is, because of the expression of the public interest, which is, as you know, codified in the 1934 Federal Communication Act, as amended.

We believe that television now is emphatically not programing in the public interest, and that something must be done.

We believe that the networks could do it, if they had the will and the willingness, and were willing to view themselves as having 210 million stockholders, as the more limited number they have.

We believe that writers and producers and actors and directors, if they were allowed more influence in the creative process, decision-making process; that we could help make a difference.

But I am not persuaded that those, either of those conditions, will be met. And in the interest of the public, perhaps the only answer is that someone has to say the law requires that the public interest be served; let us, therefore, define the public interest and see that it is served.

And there may be many ways in which the Government could begin, publicly, quietly, without pressure, to institute a kind of dialog in the public interest which would allow us all to get together and to express our concerns.

One of the problems with the family hour, we and the actors and the directors have all been speaking long before the networks were speaking about our concerns of violence on television. We were excluded from that process, when we felt we had a great deal to add, and we are not only willing, we are all terribly, terribly eager, to limit violence on television. We believe it is destructive.

And just as you don't ultimately have to wait until the Surgeon General's report on cigarette smoking comes out to know that cigarettes probably are harmful, it seems to us that men and women of good will can draw certain conclusions about the probability of the effects of violence on television. It clearly does little good, and it may do irretrievable harm.

Mr. **Van Deerlin**. One would assume that if the Surgeon General's report on television violence causes no more reaction and response than the Surgeon General's report on cigarette smoking, the problem will continue to drift without any solution.

I was interested in the example you gave us of the program idea you took to a network for a story based on the shooting of the Black Panther in his bed which, by the time it had gone through the thinking processes and the people you proposed it to, turned out to be something without point.

I notice you simply related that you had offered it to a network. How do you go about that? At what level of the network do you go in with this idea? To programing, or what?

Mr. **Rintels**. This was to be a pilot for a new series. I was associated with a very fine producer, Mr. Lee Rich, of Lorimar Productions, and a very fine actor, Mr. Henry Fonda, and we wanted to do a television series about a lawyer, in which Mr. Fonda would play the title part, ahd this was the premise that we wanted as the first show, and that was what the network told us we had to change it to before the script could be written.

Mr. **Van Deerlin**. When you say, "The network," who do you mean?

Mr. **Rintels**. The programing department.

Mr. **Van Deerlin**. And you talked with a top executive there, did you?

Mr. **Rintels**. A top executive, a vice president. I would rather not name him.

Mr. **Van Deerlin**. Of course not, I wouldn't ask you to, but it is interesting that something like this could become so laundered. This is just one person you dealt with, was it? One man?

Mr. **Rintels**. One man. There are others in the room when these things happen. There are programing staffs.

Sir, the experience is the commonplace; not the exception. The Writers Guild sent a questionnaire to its entire membership 4 or 5 years ago, and only 8 percent of our members, of those who answered the question, only 8 percent said they had not been censored. Censorship takes, as you have been told, really two forms; one is, the kind of programs that are bought by the programing department, the kind of formats they want, and then secondly, the broadcast standards and practices department, which have the responsibility of monitoring the scripts day by day, and the programing department initially is, of course, the strongest form for censorship because the programs which get on the air at all——

Mr. **Van Deerlin**. Have to start there.

Mr. **Rintels**. Sure. They are not about poets and artists and music and humanities. You would think, for example, in terms of family viewing hour, that if anybody was genuinely interested in creating programing suitable for a general family viewing audience, that you could include ballet or puppet shows or opera or serious drama or quiet drama, but profits might suffer, and that was not the approach.

Mr. **Van Deerlin**. At today's prices, what does it cost to produce a half-hour pilot?

Mr. **Gelbart**. Anywhere from $200,000 to $400,000. I have heard of them for more than $400,000. You rarely hear of one that is less than $250,000, or so.

Mr. **Van Deerlin**. So no one is going to produce a pilot on speculation, is that right?

Mr. **Gelbart**. In a sense, they are all on speculation, but they want to hedge their bets as much as they can.

If I may, we talk a lot about censorship, and network censorship, and guilds and groups of people and monolithic organizations, but it usually boils down to a censor and a writer and his work, as it did in the case of an entire program. I don't know if anyone has mentioned how ad hoc this censorship is, and how subjective it is, and how tastes change from censor to censor on a show with relatively wide boundaries, in terms of permissiveness, "M*A*S*H." I would be told by one censor that the word "circumcision" is tasteless, which would be news to the people of Israel, at least, and "virgin," as part of a script.

Mr. **Van Deerlin**. It was part of the Epistle in church 1 week ago Sunday.

Mr. **Gelbart**. Well, that wasn't during prime time. Likewise, the word "virgin" was once found to be questionable. That is reducing it to the absurd, but we live with the absurd a great deal of the time.

Mr. **Van Deerlin**. Mr. Waxman.

Mr. **Waxman**. I find that incredible, when you talk about one censor and censors with varying opinions, and even their own opinions might not be reflected, because they might well be trying to second-guess somebody else's opinion; not just the viewing audience, but some executive higher up the ladder.

Mr. **Gelbart**. It boils down to that member of the public preserving his own interest, and his own interest is his job. Not the public's interest, but will he have to answer for this somewhere down the line.

Mr. **Waxman**. So it is fair to say you are not satisfied, even if there were no family viewing concept, with the notion of that kind of censorship taking place?

Mr. **Gelbart**. I am satisfied with the people who make a program being responsible for the contents of that program, at the risk of some bad taste spilling out onto the American public. I think bad taste, in limited quantities, and I think we get it in limited quantities, is preferable to all of the devices we have now for making sure they won't be contaminated, because now they have been contaminated in a much more destructive way.

Mr. **Waxman**. Any censor, on a 1 to 1 basis, has got to be arbitrary, because tastes differ from individual to individual.

Have you seen any changes, though, in your experience, since the family viewing came into being in the attitudes of censors? Are they much harder in evaluating content of programing than they were before?

Mr. **Gelbart**. They are confused, and they spread that confusion.

Mr. **Waxman**. Is "M*A*S*H" within the family viewing time period, or is it after?

Mr. **Gelbart**. It was both. It started at 8:30 last season, which was the first season of the implementation of the family viewing hour; did 13 programs in that time period, and then changed to 9 o'clock, so the confusion was compounded. It was compounded.

Mr. **Waxman**. But what kind of changes, if any, had to be made in the show to accommodate it to this new family viewing?

Mr. **Gelbart**. I couldn't say, "Fanny Hill" at 8:30, but I could say it at 9. I said that a good deal of it is absurd, and that is the kind of thing I have to tell you about.

But I will say that there was just a great sigh of relief between program practices, which is CBS's euphemism for censorship, and the people who did the series when we were moved at 9 o'clock. We knew that a whole area of time wasting and creative killing activity would stop; that they would be more tolerant of what we wanted to do.

Mr. **Waxman**. And does this have an effect, when you are on after the viewing family time, have an effect on your syndication later of the program?

Mr. **Gelbart**. I am told it does.

Mr. **Waxman**. I guess it is too early to know.

Mr. **Gelbart**. Well, no. We were told that there were discreet inquiries going around as to "M*A*S*H's" suitability in syndication at prime time. There was concern, but that is at a level that I am not too familiar with.

Mr. WAXMAN. I am looking at a suggested question, and one of the suggested questions is, what is your solution to the problem of gratuitous and excessive violence on television, and is it fair to assume that your answer to that is to have the creative community exercise self-restraint, or do you have some other suggestion?

Mr. RINTELS. Clearly, the first solution would be for the networks to provide greater diversity in programing, which they could do without any help from the Government, or any help from us, and we wish they would.

In the case of what you call gratuitous violence, somebody else might disagree with it, but something that is terribly violent, I think that may be one of the very painful, occasional prices that should be paid by a free market, a free communications climate. That is something we all cherish.

I think that if it were left to the writers and producers and actors and directors, there would be a great deal less of it. I think that the present system could work if administered with a view toward making it work.

I would only like to see any Government intervention at all, in terms of the public interest, as the most extreme, last resort, and subject only to the most careful, public scrutiny. I think the networks can do it.

Somebody has to be responsible. It is a limited access medium. There are only so many channels. The costs of programing are, as you know, extraordinarily high. Somebody has to make the decisions, what gets on the air. Let the networks do it. I don't want to be the person who makes the decisions. Somebody has to. But let them do it with a view towards truly serving the public interest, not their stockholders.

Mr. WAXMAN. We don't know at this point what the outcome of the family viewing trial will be, but aside from whatever that determination might be, do you see any greater likelihood that the networks will be more willing to listen to what the creative community has to say in the development of programing?

Mr. RINTELS. We are on record, all of us is asking them. We have not yet been invited into the councils. We think that we should be. We also think that groups from the cultural, civic, religious, educational areas could be invited in. We all have discussions, and we own the airwaves. They are the trustees. We think that they should solicit the opinions of the people whom they are serving.

Mr. GELBART. If I may, the creative community does more than write television. It writes films and it writes radio and it writes for the theater, and I think an example of other things we can write can be seen in other bills of fare. See what is playing in New York on the theater. See the diversity. You will find very little violence on the stage. Those are creative people left to their own devices. There is some in films. There is a lot of it in films, but there is Disney in films. There is everything in between.

I think that if the family viewing hour case decides against the family viewing hour, that if the networks are willing to give us the same freedom of imagination as those other entrepreneurs, there is a chance for diversified programing.

Mr. RINTELS. We feel, sir, that perhaps the networks' position in this is slightly less pure than they would have you believe. If they are legitimately concerned with cleaning up violence on television, isn't it logical that they would first meet with the producers and the writers and the actors and directors who do the programing?

Mr. **Waxman.** If they would have us believe anything, I would hope they would come before this committee and tell us what they would have us believe, but they won't even do that.

Mr. **Rintels.** Well, Mr. Leonard, of CBS, I believe, was here giving interviews. He wouldn't speak to you, but he would speak to the press here earlier. I believe he was here.

Mr. **Gelbart.** Maybe he still is.

Mr. **Rintels.** I liked your line about being the only moose at a taxidermist's convention, sir.

If they were concerned not simply with the public relations aspect of it, but with truly solving the problem of violence on television, it would be the easiest thing in the world for them to do it. They simply don't have to schedule it. They don't have to buy it. They could meet with the creative community and discuss it.

Mr. **Waxman.** It has been charged that there is more violence after 9 o'clock now than at any other time in television history. Do you find that to be the case, from your own experience?

Mr. **Rintels.** I am sorry, sir, I don't watch enough television any more to be able to give you an answer to that question. There is very little on television I want to watch.

Mr. **Waxman.** I appreciate your testimony.

Mr. **Gelbart.** Thank you.

Mr. **Van Deerlin.** Thank you.

Our next witness is Mr. Geoffrey Cowan, a public interest lawyer and lecturer in communications at UCLA.

STATEMENT OF GEOFFREY COWAN, ATTORNEY, LOS ANGELES, CALIF.

Mr. **Cowan.** Thank you, Mr. Chairman. I thank you and the members of the Subcommittee on Communications for inviting me to testify on the subject of violence and sex on television.

Although I am a legal advisor to the Writers Guild and their challenge to the family viewing hour, I am not today speaking for the Writers Guild or for the other lawyers in that lawsuit. I will not discuss the family hour case at all in my remarks this afternoon. That subject will doubtless be covered, and has to some extent been covered, by other witnesses.

Rather, my remarks are addressed to a question which lingers in the air whenever one criticizes the family hour. Put simply, the question is this: Assuming that the family hour violates the first amendment and the Administrative Procedure Act, is there anything which the Government properly can do to reduce the level of violence on television? That, of course, is a question which this committee has addressed to several of the witnesses this afternoon.

Interestingly, those who created the family hour generally contend that the answer to that question is no. FCC Chairman Richard Wiley, and representatives of the networks, have taken the position that there is probably nothing legitimate which the Government can do directly to deal with violence on television.

I disagree. In my opinion, there are several kinds of rules which the FCC or Congress could adopt, which would have the effect of reducing violence on television and of increasing the ability of parents to restrict the amount of violent programing to which their children are exposed.

Since my prepared testimony is lengthy, I am going to try to highlight and summarize my main points in this oral presentation.

In essence, I will describe two forms of Government action which are constitutionally acceptable, in my opinion, and which I think could help viewers to make and enforce meaningful choices.

First, the Government could adopt rules designed to assure that at least one program designed for children is available to viewers on one of the networks at all times during the hours between 7 and 9 p.m.

Second, the Government could assure the availability of slightly redesigned television sets which would make it easier for parents to control the viewing choices of their young children.

One way to reduce the amount of violence and sex on television, in my opinion, and I agree with the distinctions that have been drawn between violence and sex. If I couple them together, it is only because it is the committee's own coupling, not my own choice. One way to reduce the level of violence would be to require broadcasters to provide a greatly increased amount of prime time programing designed primarily for children.

While there is no guarantee that such programing would be free from violence, it is axiomatic that such shows will contain less realistic sex and violence than programs aimed at the 18- to 49-year-old age group.

The networks' occasional prime time children's specials, for example, have tended to be prosocial and nonviolent, but children's programs are not likely to appear regularly on prime time television without the Government's intervention.

One of the most distressing facts about prime time television, at present, is that there are virtually no such shows.

A glance at "TV Guide" will illustrate that, "The Wonderful World of Disney" is the only regularly scheduled exception to this rule.

As the FCC concluded in its "Children's Television Report," there is a tendency on the part of many stations to confine most, or all, of their children's programing to Saturday and Sunday mornings.

The absence of children's programing is a result of the realities of commercial television.

As the chairman pointed out earlier this afternoon, programing on commercial television is designed to be sold to advertisers, and advertisers are primarily interested in reaching the 18 to 49, or even 18- to 35-year-old audience.

The needs and tastes of people younger than 18 are largely and generally ignored. The family viewing rule has done nothing to put children-oriented programs on the air. The broadcasters continue to design shows for the 18- to 49-year-old audience, even in the 7 to 9 p.m. time period, but on the assumption that children may be watching with their parents, the networks now exclude material which may be offensive, embarrassing, or in somebody's opinion, inappropriate.

The family hour has not produced a single program designed for young children. In fact, if anything, the number of shows designed for children has decreased since the rule was adopted.

As this committee is well aware, the FCC and the networks claim that the family hour was created and implemented through the efforts of CBS President Arthur Taylor during the months between November 1974, and February 1975. Less well known is what happened to CBS's own schedule during that 4-month period.

In the fall of 1974, CBS had three prime time shows largely aimed at children: "Apples Way," "Planet of the Apes," and "The Waltons." All three of these shows were generally nonviolent and featured prosocial messages. In deed, in April 1974, CBS Broadcast Group President John Schneider, testifying before Senator Pastore's committee, cited "Apples Way" prosocial themes as an antidote to television violence. All three of these shows, incidentally, were extremely popular with young audiences.

Yet in February 1975, during the week after CBS persuaded the NAB Television Code Review Board to adopt the family viewing hour rule, CBS pulled both "Apples Way" and "Planet of the Apes" off the air. And what programs do you suppose CBS chose to take their place? For "Planet of the Apes," which had been broadcast Friday evenings at 8 p.m., CBS substituted "Khan!" a CBS-produced detective series, and at 9 p.m. on Sunday nights, the time slot occupied by the prosocial "Apples Way," CBS substituted "Cher."

I do not mean to suggest that either "Khan!" or "Cher" doesn't belong on television, but I do think that the CBS programing changes in February 1975, illustrate an unfortunate truth about commercial television: It is the 18- to 49-year-old audience which counts. Even when CBS was most publicly concerned about what children were seeing during the 8 to 9 time period, the network felt compelled to replace child-oriented shows with programs filled with violence and burlesque.

Children, in short, are currently being short-changed by prime time television, and even the family hour has done nothing to provide children's programs on their behalf.

Under the circumstances, in my opinion, it would be both appropriate and constitutional for the Government to effect the kind of programing diversity which would otherwise be absent from commercial television.

For while it is unconstitutional for the Government to adopt rules which abridge speech, it is now well established that the Government can adopt laws or rules which enhance speech. This apparently paradoxical principle, formulated by the courts and the FCC in a series of decisions, and I have highlighted several of those decisions in my prepared statement, which I won't quote from at length on this subject, but it is available for the committee to study; but this principle was perhaps best summarized by Prof. Thomas Emerson in his classic study of the first amendment, which I quote at length on page 9 of my statement.

And the leading Supreme Court decision on the FCC's power to enhance speech, of course, is the *Red Line Broadcasting* case which affirmed the constitutionality of the FCC's fairness doctrine.

It would be presumptious for me to try to formulate the exact text of a law or rule which could be adopted, but I do think that the

Government could require each broadcaster to air a minimum number of hours of prmie time programing, specifically designed for younger audiences. The rule could be written in such a way that there would be at least one network children's show available each night between the hours of 7 and 9 p.m.

A useful point of departure might be the exception for children's programing currently contained in the prime time access rules, which defines a children's program as a program primarily designed for children ages 2 through 12.

I am sure that the committee would wonder, as I do, what kind of programing would be produced by a rule requiring prime time shows designed for children. Obviously, one can't know for certain, but shortly after the prime time access rule children's exception was adopted, CBS announced a children's programing concept which gives one reason to hope that the programs would be educational, exciting, prosocial and generally nonviolent.

In his testimony to Senator Pastore's committee in April of 1974, John Schneider described CBS's plans for prime time children's programs the following fall. He stated, and I quote from his testimony:

> Our present plans call for children's specials on seven out of every eight Saturday nights, from 7:30 to 8:00 p.m., starting on September 14th.

Incidentally, that would be the half hour preceding "All in the Family."

> Designed primarily for young viewers, these programs will include the animated genius of Dr. Seuss, holiday specials, such as "The Night Before Christmas" and "Thanksgiving Treasure," a number of classics and fairy tales, such as "Aesop's Fables" and "The Selfish Giant," as well as several CBS News presentations.

Unfortunately, CBS never implemented this plan. In June of 1974, a Federal appeals court ordered a 1-year delay in the starting date for the prime time access rule, which was from September of 1974, to September of 1975, and as a result, CBS abandoned the plan and has not revived it.

But CBS's original proposal illustrates that there are means by which Government could assure the availability of generally nonviolent programing which is not only suitable, but is actually designed for younger audiences.

Now, I want to turn to the second kind of action which I think the Government could engage in which would be constitutional, by suggesting a few relatively simple, technological requirements, which could enable parents to exert greater control over what their children watch on television.

The miraculous technology of broadcasting has, of course, contributed an enormous amount to American life, but there is also something pernicious about the technology of television. Particularly among young children, it has an impact and a pervasiveness far greater than other media. Moreover, a child of 2 or 3 has full mastery of this extraordinary device. The youngest child can turn the switch on, tune to the channel of choice and watch and hear a program designed for people at least 10 times its age.

In this sense, television can become an uninvited guest in the home, telling the child stories that the child's parents would never want it to hear, or showing it tricks that the parents would never want it to see.

The ideal solution, of course, is parental guidance. But realistically, parental supervision, in most homes, is virtually impossible. Parents, busy in another room, making dinner, reading the paper, visiting with friends, or just seeing each other for the first time in the day, use the television as a child's companion or babysitter.

The family hour was itself largely designed to help parents concerned about this problem of supervision; to assure them that there would be a 2-hour time period during which they need not worry about what children might see or hear on the air, but in my opinion, there are other and better ways in which the Government can aid concerned parents in providing protection for their children.

What I would like to propose are a few simple technological requirements, or safety devices, not unlike the safety caps now provided on aspirin bottles or the safety locks on automobiles. For if television represents a dangerous, as well as a wonderful technology, then we should seek to find technological ways to harness it, as well.

Since I am not an engineer or a scientist, the proposals I am about to advance are fairly rudimentary, and I have no doubt that they can be improved on. However, to check the viability of these proposals, I last week took the liberty of consulting with Dr. Peter Goldmark, the inventor of the long-playing record, and one of America's leading scientists. Dr. Goldmark is the former president of CBS laboratories and is currently president of the Goldmark Communications Co.

He has given me permission to give you his reaction to my proposals, but I do so with the obvious caveat that his comments were based on a relatively brief telephone conversation, and not on a careful examination of these proposals.

Now, in my prepared testimony, I described four different technological devices, but since my time is running short, I will only summarize the first two.

First, I suggest a lock on the "On-Off" switch. As mentioned earlier, a child of two can turn a television set on without difficulty by turning a switch or pressing a button. This, of course, enables unsupervised children to watch television whenever they like.

The easiest way to put control back in the hands of parents would be to put some kind of lock on the set. According to Dr. Goldmark, this would be relatively easy and inexpensive to accomplish. Such a device on a new generation of television sets, he estimates, would, at most, add $4 to the retail cost of the set.

The second proposal which I would like to make would be a lock on specified channels. At any given hour, a parent may well approve of a child watching some channels, but not others. In our household, for example, our 2½-year-old son, Gabriel, is generally only allowed to watch public television. For the most part, this presents no problem, since so few shows on the other stations appeal to him, but on Saturday morning, there is the risk that he would want to watch the rather violent children's shows on the commercial networks. A station lock would allow Gabriel to turn the set on or off, but restrict him to a station or stations of which my wife and I approve.

Obviously, the station lock is more technologically complex than the "On-Off" lock. Dr. Goldmark believes that it could be designed into new sets with relative ease, and estimates that the "On-Off" lock, plus the station lock would, together, add about $20 to $25 to the retail cost of a new television set.

In conclusion, I would like to emphasize that the proposals I am making today are designed to increase diversity and to increase the ability of parents to supervise their children's viewing.

It is my firm belief that if we can make television a free and diverse marketplace where individual families are able to make meaningful choices, we will have satisfied those legitimate citizen complaints which led to the creation of the family viewing hour and which are the proper concern of this committee's hearings.

[Testimony resumes on p. 183.]

[Mr. Cowan's propared statement with attachments follow:]

STATEMENT OF GEOFFREY COWAN, ATTORNEY, LOS ANGELES, CALIF.

Mr. Chairman, members of the Subcommittee on Communications, thank you for inviting me to testify on the subject of violence and sex on television.

My name is Geoffrey Cowan. I have had the opportunity to specialize in Communications Law as a public interest attorney with The Center for Law and Social Policy in Washington, D.C., then as an Adjunct Professor and Director of the Communications Law Program at UCLA Law School, and currently as a Lecturer in Communications Studies at UCLA and a private attorney with the firm of Levine and Krom in Beverly Hills. Although I am a legal advisor to the Writers Guild in their challenge to the Family Viewing Hour, I am not today speaking for the Writers Guild or for the other lawyers in the Family Hour Lawsuit. Indeed, I do not propose to discuss the Family Hour case in my prepared remarks; that subject will doubtless be treated in depth by other witnesses.

Rather, my remarks are addressed to a question which lingers in the air whenever one criticizes the Family Hour. Put simply, the question is this: assuming that the Family Hour violates the First Amendment and the Administrative Procedure Act, is there anything which the government properly can do to reduce the level of violence on television.

Interestingly, those who created the Family Hour generally contend that the answer to that question is "no." FCC Chairman Richard Wiley and representatives of the networks have taken the position that there probably is nothing legitimate which the government can do directly to deal with violence on television.

I disagree. In my opinion there are several kinds of rules which the FCC or Congress could adopt which would have the effect of reducing violence on television and of increasing the ability of parents to restrict the amount of violent programing to which their children are exposed. My discussion of these areas this afternoon will be brief, but if the Committee would like I would be happy to prepare a more detailed analysis and proposal for submission at a later date.

Perhaps the easiest way to begin is to remind the Committee of what the First Amendment does *not* allow. The words are perfectly simple: "Congress shall make no law . . . *abridging* freedom of speech, or of the press." To many, myself included, that language means the government cannot keep *any* speech off the air, but most courts allow carefully limited censorship where (1) the speech is not of a protected character, such as pure obscenity, or (2) there is a clear and present danger that the speech will bring about some substantive evil, such as a riot or revolution, which the state can constitutionally prohibit.

For Congress or the FCC to adopt a rule keeping violence off the air, it would first have to be determined either that (1) violence, like obscenity, is not protected speech, or that (2) studies like the Surgeon General's Report demonstrate that there is a clear and present danger that particular kinds of television violence will directly produce illegal conduct. My guess is that many members of Congress think that there is at present an adequate basis to make such a finding.

Having made such a finding, however, Congress or the FCC would then to frame the rule in an extremely narrow way. For it is likely that the courts would strike down a rule which was so broad or vague that it might eliminate protected speech or lead to unwarranted self-censorship.

The vagueness problem can be illustrated by the networks' experience with the Family Hour rule. That rule prohibits programing which is "inappropriate for general family viewing." Unfortunately, no one can explain what is "inappropriate"—least of all the authors of the rule. When the National Association of

Broadcasters tried to establish guidelines for the rule, they asked each of the three networks what the rule meant. To try to provide an answer, Tom Swafford, who was then the CBS Vice President for Program Practices, circulated a memo-questionnaire inside CBS asking for guidance. Everyone came back with a different answer. Finally Swafford sent an apologetic note back to the NAB explaining that "I have been trying to get some kind of a commitment from somebody other than Program Practices, as to just what it was we had in mind with Family Viewing. My efforts have been fruitless, my persistence unproductive. Well what the hell . . ."

Since CBS claims to have created the Family Viewing concept, the network's inability to define its meaning is particularly telling. The result was that no one in the creative community or at the networks knew what was or what wasn't allowable. To illustrate the vagueness problem, I am submitting a few CBS memos, with the thought that the Committee might want to include them in the record of these proceedings.

I personally doubt that anyone could draft a meaningful rule which would not be unconstitutionally vague. Certainly the government couldn't ban all violence since violence is an essential ingredient of the greatest works of children's literature, from "Little Red Riding Hood" and "Peter and the Wolf," to "Snow White," "Peter Pan" and "The Wizard of Oz." While a ban on "gratuitous violence" or "explicit violence" might come closer to passing constitutional scrutiny, I doubt that such a rule would have any effect since it is unlikely that any producer or network executive would admit that anything broadcast in 1975 would have been eliminated by such a standard. In short, the government cannot constitutionally eliminate a significant amount of televised violence through censorship.

But there are other devices by which, in my opinion, the government could constitutionally begin to deal with televised violence. In essence, the government can properly act to increase the ability of each viewer—and particularly of each parent—to make a meaningful choice about what to watch and, equally important, about what *not* to watch. At present, in my opinion, most of those who complain about televised sex and violence feel helpless in front of their television sets. Most of the time there is nothing on the air which they want to watch—or, perhaps more significantly, which they want their children to watch. Yet they are unwilling or unable to play the policeman's role of keeping the set turned off or, if there is a show that they are happy to have their children see, of assuring that the set is turned to that particular station.

There are at least two forms of government action which could help viewers make and enforce meaningful choices. First, the government could adopt rules designed to assure that at least one program designed for children is available to viewers at all times during the hours between 7–9 p.m. Second, the government could assure the availability of slightly redesigned television sets which would make it easier for parents to control the viewing choices of their young children.

THE GOVERNMENT CAN REQUIRE BROADCASTERS TO PRESENT PROGRAMS DESIGNED FOR CHILDREN

One way to reduce the level of violence and sex on television, in my opinion, would be to require broadcasters to provide a greatly increased amount of prime-time programming designed primarily for children. While there is no guarantee that such programming will be free from violence, it is axiomatic that such shows will contain less realistic sex and violence than programs aimed at the 18–49 year old age group. The networks' occasional prime-time childrens' specials, for example, have tended to be pro-social and non-violent.

But childrens' programs are not likely to appear regularly on prime-time television without the government's intervention. One of the most distressing facts about prime-time television at present is that there are virtually no such shows. A glance at TV Guide will illustrate that "The Wonderful World of Disney" is the only regularly scheduled exception to this rule. As the FCC concluded in its Children's Television Report, "there is a tendency on the part of many stations to confine most or all of their children's programming to Saturday and Sunday mornings," 50 FCC 2d 1, 8 (1974).

The absence of children's programming is a result of the realities of commercial television. Programming on commercial television is designed to be sold to advertisers, and advertisers are primarily interested in reaching the largest possible 18–49 (or 18–35) year old audience, see generally Les Brown, "Television: The Business Behind the Box" (Harcourt, Brace, Jovanovich, 1971). The needs and tastes of people younger than 18 are largely ignored.

The Family Viewing Rule has done nothing to put children-oriented programs on the air. When FCC Chairman Wiley told Congress that the Family Hour is not a "childrens' hour" he was engaging in understatement. The broadcasters continue to design shows for 18–49 year olds, even in the 7–9 pm time period, but, on the assumption that children may be watching with their parents, the networks now exclude material which may be offensive, embarrassing, or inappropriate. The Family Hour has not produced a single program designed for young children.

In fact, if anything, the number of shows designed for children has decreased since the rule was adopted. As this Committee is well aware, the FCC and the networks claim that the Family Hour was created and implemented through the efforts of CBS President Arthur Taylor, during the months between November, 1974 and February, 1975. Less well known is what happened to CBS's *own schedule* during that four month period. In the fall of 1974 CBS had three prime-time shows largely aimed at children—"Apples Way", "Planet of the Apes", and "The Waltons". All three of these shows were generally nonviolent and featured "pro-social" messages. Indeed, in April, 1974 CBS Broadcast Group President John Schneider, testifying before Senator Pastore's Committee cited "Apples Way's" pro-social themes as an antidote to television violence. All three of these shows, incidentally, were extremely popular with young audiences.[1]

Yet in February, 1975—during the week after CBS persuaded the NAB Television Code Review Board to adopt the Family Viewing Hour rule—CBS pulled both "Apples Way" and "Planet of the Apes" off the air. And what programs do you suppose CBS chose to take their place? For "Planet of the Apes", which had been broadcast Friday evenings at 8 pm, CBS substituted "Kahn!", a CBS-produced detective series. And at 8 pm on Sunday nights, the time slot occupied by the pro-social "Apples Way", CBS substituted "Cher".

I do not mean to suggest that either "Kahn!" or "Cher" doesn't belong on television (though neither show survived for long). But I do think that the CBS programming changes in February, 1975 illustrate an unfortunate truth about commercial television: it is the 18–49 year old audience which counts. Even when CBS was most publicly concerned about what children were seeing during the 8–9 time period, the network felt compelled to replace shows with programs filled with violence and burlesque.

Children, in short, are currently being shortchanged by prime-time television, and even the Family Hour has done nothing to provide childrens programs on their behalf.[2] Under the circumstances, in my opinion, it would be both appropriate and constitutional for the government to effect the kind of programming diversity which would otherwise be absent from commercial television.

For while it is unconstitutional for the government to adopt rules which "abridge" speech, it is now well established that the government can adopt laws or rules which *enhance* speech. This apparently paradoxical principle, formulated by the courts and the FCC in a series of decisions, was perhaps best summarized by Professor Thomas Emerson in his classic study of the First Amendment. He explained:

> Regulations of the Federal Communications Commission designed to assure program balance would also, as a general proposition, not violate any mandate of the First Amendment. Such regulations require that a licensee present programs falling into different categories, such as news, education, politics, local talent, entertainment, and the like. They are essential to assure that the licensee is carrying out his obligation as public trustee to secure the First Amendment rights of the listening public to hear. The distinction the Federal Communications Commission makes between a requirement that the licensee broadcast programs within its general categories, and control over the contents of a particular program, conforms exactly to the theory that the government can take measures to expand the variety of expression but may not censor the actual expression itself. There may be a close question as to whether any given action by the FCC does in fact promote diversity or whether in the context of a particular situation specialization on the part of

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[1] According to the A. C. Nielsen's company's ratings, the six programs with the largest child audiences in the fall of 1974 were: Emergency (NBC); Wonderful World of Disney (NBC); Planet of the Apes (CBS); The Waltons (CBS); Happy Days (ABC); and Apples Way (CBS).

[2] Nor has the FCC *Children's Television Report and Policy Statement*, supra, or the Prime Time Access Rule exception for children's programs, discussed infra, resulted in any significant increase in prime-time children's programs.

> one station might not serve the purpose better. Within such limitations, however, the FCC is not abridging freedom of speech.—Emerson, "The System of Freedom of Expression," (1970) p. 666.

The leading Supreme Court decision on the FCC's power to enhance speech, of course, is *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969), which affirmed the constitutionality of the FCC's Fairness Doctrine. In addition to *Red Lion*, there are a number of other cases in which the courts have affirmed the FCC's power to adopt programming rules which increase diversity. In 1969 the Supreme Court declared that "augmenting the public's choice of programs" is in the public interest, and sustained the Commission's power "to encourage diversified programming" by requiring cable operators to originate programs in addition to those picked up from broadcasters," *U.S.* v. *Midwest Video Corporation*, 406 U.S. 649 (1969). Similarly, in the so-called "Format Change" cases the courts have held that the FCC has the power and responsibility to examine programming proposals of radio to achieve a diversity of formats, including, for example, classical music and news.

In those cases the court has explained that "it is in the public interest for all major aspects of contemporary culture to be accommodated by publicly owned resources whenever that is technically and economically feasible", *Citizens Committee* v. *FCC*, 436 F2d 263 (D.C. Cir, 1970).

The basic principle which I am advancing today was perhaps best stated in one of the leading format changes cases, *Citizens Committee to Save WEFM* v. *FCC*, 506 F.2d 246 (D.C. Cir, En Banc, 1974). In that case the court held that the FCC can constitutionally act to achieve diversity where a particular kind of programming is excluded by the realities of commercial broadcasting:

> [W]hether the diverse interests of all the people of the United States are being served by radio to the maximum extent possible is a question we cannot ignore * * *
>
> There is, in the familiar sense, no free market in radio entertainment because over-the-air broadcasters do not deal directly with their listeners. They derive their revenue from the sale of advertising time. More time may be sold, and at higher rates, by a station that has a larger or a demographically more desireable audience for advertisers. Broadcasters therefore find it to their interest to appeal through their entertainment format, to the particular audience that will enable them to maximize advertising revenues. If advertisers on the whole prefer to reach an audience of a certain type, e.g., young adults with their larger discretionary incomes, then broadcasters, left entirely to themselves by the FCC, would shape their programming to the tastes of that segment of the public.
>
> This is inherently inconsistent with "secur[ing] the maximum benefits of radio to all the people of the United States," and not a situation that we can square with the statute as construed by the Supreme Court. We think it axiomatic that preservation of a format [which] would otherwise disappear, although economically and technologically viable and preferred by a significant number of listeners is generally in the public interest.[3]

N.A.I.T.P.D. v. *FCC*, (PTAR III) (2d cir, 1975), slip up at 3025–3026. Interestingly, the court in PTAR III held that the children's programming exception is constitutional.[4]

I am sure that the Committee will wonder, as I do, what kind of programming would be produced by a rule requiring prime-time shows designed for children. Obviously one can't know for certain but shortly after the PTAR children's exception was adopted, CBS announced a children's programming concept which gives one reason to hope that the programs would be educational, exciting, pro-social, and generally non-violent.

In his testimony to Senator Pastore's Committee in April, 1974, John Schneider described CBS's plans for prime-time children's programs. He said:

> Our present plans call for children's specials on seven out of every eight Saturday nights, from 7:30 to 8, starting on September 14. Designed primarily

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[3] It cannot be otherwse when it is remembered that the radio channels are priceless properties in limited supply, owned by all of the people but for the use of which the licensees pay nothing. If the marketplace alone is to determine programming format, then different tastes among the totality of the owners go ungratified. Congress, having made the essential decision to license at no charge for private operation as distinct from putting the channels up for bids, can hardly be thought to have had so limited a concept of the aims of regulation. In any event, the language of the Act by its terms and as read by the Supreme Court, is to the contrary.

[4] Obviously that ruling does not conclusively demonstrate that the proposal discussed in this testimony would also be held constitutional, since the PTAR III exception encourages, but does not require, children's programing.

for young viewers, these programs will include the animated genius of Dr. Seuss, holiday specials, such as "The Night Before Christmas" and "Thanksgiving Treasure", a number of classics and fairy tales such as "Aesop's Fables" and "The Selfish Giant", as well as several CBS News presentations.

Unfortunately, CBS never implemented this plan. In June, 1974 a federal appeals court ordered a one year delay in'the starting date for the PTAR children's exceptions (from September, 1974 to September, 1975). As a result, CBS abandoned the plan and never revived it. The full saga of the proposal, including a more detailed description of the programs which CBS had in mind, is set forth in a January 8, 1975 Variety article entitled "Kidvids Greatest Opportunity". A copy of that article is attached to this testimony with the thought that the Committee might want to include it as part of the record of these proceedings.

There is a second method by which the government could insure a greatly increased volume of children's programming which would present even fewer constitutional objections, but which would undoubtedly be even more strenuously resisted by the entire commercial television industry.

Briefly, the government could create a non-commercial Children's Television Network which would utilize channels now assigned to commercial users.

This approach, which I will not attempt to discuss in detail this afternoon, is carefully described by Ms. Majorie Steinberg in "The FCC As Fairy Godmother: Improving Commercial Television," 21 UCLA Law Review 1290 (1974) at 1332-1338. The essence of her analysis is as follows:

> This seemingly Utopian solution lies within the power of the FCC under its present statutory grant of power.
>
> Section 303(c) of the Communications Act provides the FCC with the authority to allocate the electomagnetic spectrum among stations * * * Unlike the earlier allocations, however, this allocation would set aside hours rather than frequencies for the presentation of noncommercial childrens programming. Present licensees would have their licenses renewed for their assigned frequency, only for twenty-two or twenty-three hours per day. The other hour or two of frequency use could be granted to a different licensee such as the school board or a group of educators or parents * * *

It would be presumptuous to try to formulate the exact text of a law or rule which could be adopted. But I do think that the government could require each broadcaster to air a minimum number of hours of prime-time programming specifically designed for younger audiences. The rule could be written in such a way that there would be at least one network children's show available each night between the hours of 7-9 pm.

A useful point of departure might be the exception for children's programming currently contained in the prime-time access rule (PRAT).[5] While I don't offer that rule as a model, this committee might be interested in its definition of children's programming, as elucidated by the U.S. Court of Appeals for the Second Circuit. The Court explained:

> A "children's program" is a program "primarily designed for children aged 2 through 12." A precise definition is probably unattainable, and, indeed, undesirable. No one can set boundaries to the fantasy of a child's world. Adults brave enough to enter that domain must leave behind their sense of selfassurance. A conclave of all the advertising agencies and all the station managers could not speak with certitude for the children's world. The exemption for network children's programs does not, by its terms, exclude fiction or drama, fairly tales or poetry, nor does it prescribe what is eductional or informational. It does not provide that if the rest of the family happens to be entertained, as well, the program is no longer "primarily designed for children".
>
> [P]rivate grants and governmental subsidy could establish a Children's Television Network which could send shows to individual licensees. Groups like Children Television Workshop could also be funded both by the government and private groups to produce shows for children.
>
> 1334-5

Thus there are means by which the government could assure the availability of generally non-violent programming which is not only suitable, but is actually designed for, younger audiences.

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[5] The Prime Time Access Rules, of course says that television stations in the top 50 markets may not carry more than three hours of network programming during the prime hours 7-11 p.m. est). The rule was amended in 1974, however, to allow stations to carry more than three hours of network programs when the additional shows were news, documentaries or children's programs.

Now I want to call the Committee's attention to the kind of relatively simple technological requirements which could enable parents to exert greater control over what their children watch on television.

THE GOVERNMENT CAN INSURE THE AVAILABILITY OF TELEVISION SETS WHICH HELP PARENTS CONTROL THEIR CHILDREN'S VIEWING CHOICES

The miraculous technology of broadcasting has contributed an enormous amount to American life. It is a marvelous informational and educational tool, which has enriched American lives through programs ranging from "Sesame Street" to "Meet the Press," "60 Minutes," and the evening news. The live coverage of great events has been breathtaking—from the Kennedy assiassnation to the Watergate Hearings, to the political conventions, to the Moon landing, to the Olympics, to the Bicentennail coverage—and such coverage would have been possible on no other medium. It provides us with occasional great entertainment, like the Bolshoi Ballet, or "Clarence Darrow" or "Love Among the Ruins," with comforting informative shows—from "Today" to "Tonight" to "Tomorrow"—to wake us up and put us to sleep; with remarkable humor and satire—from "All in the Family" and "Mary Hartman, Mary Hartman," to "The Mary Tyler Moore Show" and "Rhoda," and with respect to escapist fare which provides friendship for the ill and the elderly and a restful release for the rest of us.

But there is also something pernicious about the technology of television. Particularly among young children it has an impact and a pervasiveness far greater than other media. These distinctions were highlighted by the courts in cases involving the regulation of cigarette advertising on television. As one court noted:

> A pre-school or early elementary school age child can hear and understand a radio commercial or see, hear and understand a television commercial, while at the same time be substantially unaffected by an advertisement printed in a newspaper, magazine or appearing on a billboard.—*Capital Broadcasting* v. *Mitchell*, 333 F. Supp. 583, 586 (1971).

Besides the fact that television can be understood at such a young age, it is also uniquely pervasive. To quore another case involving cigarette advertising,

> Written messages are not communicated unless they are read, and reading requires an affirmative act. Broadcast messages, in contrast, are "in the air" * * * An ordinary habitual television watcher can avoid the commercials only by frequently leaving the room, changing the channel, or doing some other such affirmative act * * * —*Banzhaf* v. *FCC*, 405 F.2d 1080, 1100, (DC Cir. 1969).

The incidence of violent acts on television are similarly pervasive.

Moreover, a child of two or three has full mastery of this extraordinary device. The youngest child can turn the switch on, tune to the channel of choice, and watch and hear a program designed for people at least 10 times its age.

In this sense, television can become an uninvited guest in the home, telling the child stories that the child's parents would never want it to hear—or showing it tricks that the parents would never want it to see.

The ideal solution, of course, is parental supervision. But, realistically, parental supervision in most homes is virtually impossible. Parents, busy in another room making dinner, reading the paper, visiting with friends, use the television as a child's companion or babysitter. "Parents, in our view, have—and should retain—the primary responsibility for their childrens' well being," the FCC noted in its "Report on the Broadcast of Violent, Indecent and Obscene Material," February 19, 1975. However, the Commission went on to point out, "this traditional and revered principle, like other examples which could be cited, has been adversely affected by the corrosive processes of technological and social change in twentieth-century American life."

The Family Hour was largely designed to help parents concerned about this problem of supervision, to assure them that there would be a two hour period during which they need not worry about what children might see or hear on the air. As Chairman Wiley explained in a February 10, 1975 speech in Atlanta, Georgia, the Family Hour was designed to "protect children from objectionable programming—or at least to aid concerned parents in providing that protection."

In my opinion there are other and better ways in which the government can aid concerned parents in providing protection for their children. What I would like to propose are a few simple technological requirements or safety devices—not unlike the safety caps now provided on aspirin bottles or the safety locks on automobiles. For if television represents a dangerous as well as a wonderful technology, then we should seek to find technological ways to harness it as well.[6]

Since I am not an engineer or scientist, the proposals I am about to advance are fairly rudimentary and I have no doubt that they can be improved on. However, to check the viability of these proposals I last week took the liberty of consulting with Dr. Peter Goldmark, the inventor of the long playing record, and one of America's leading scientists. Dr. Goldmark is the former President of CBS Laboratories and is currently President of the Goldmark Communications Company. He has given me permission to give you his reaction to my proposals, but I do so with the obvious caveat that his comments were based on a relatively brief telephone conversation and not on a careful examination of these proposals.

There are four different technological devices which I would like to describe. Although I will list all four with Dr. Goldmark's comments, I suspect that the last two, while technologically feasible, may be too elaborate and expensive for government action at this time.

(1) *A lock on the on-off switch.*—As mentioned earlier, a child of two can turn a television set on without difficulty, by turning a switch or pressing a button. This, of course, enables unsupervised children to watch television whenever they like.

The easiest way to put control back in the hands of parents would be to put some kind of lock on the set. According to Dr. Goldmark this would be relatively easy and inexpensive to accomplish. Such a device on a new generation of television sets, he estimates, would, at most, add $4.00 to the retail cost of the set, and might, he suggests, be absorbed by manufacturers who would merchandise it as a new feature. It would be somewhat more costly to place such a device on existing sets. Dr. Goldmark notes that the lock could be placed on the power cord, rather than built into the set, and he estimates that it would retail for $15–$20 at most.

(2) *A lock on specified channels.*—At any given hour a parent may well approve of a child watching some channels, but not others. In our household, for example, our 2½ year old son, Gabriel, is generally only allowed to watch public television. For the most part, this presents no problem since so few shows on the other stations appeal to him, but on Saturday morning there is the risk that he would want to watch the rather violent childrens' shows on the commercial networks. A station-lock would allow Gabriel to turn the set on or off, but restrict him to a station or stations of which my wife and I approve.

Such a device would be particularly desirable if the government assured that a children's program was always available on at least one network during the early evening hours. The parent could adjust the lock at each time period to confine the set to the channel broadcasting the children's show. Alternately, the lock could simply prevent the child from turning to a program which the parents deem unsuitable.

Obviously the station-lock is more technically complex than the on-off lock. Dr. Goldmark doubts that it could be attached easily to existing sets. However, Dr. Goldmark believes that it could be designed into new sets with relative ease. He estimates the on-off lock plus the station lock would, together, add about $20–$25 to the retail cost of a new television set.

The third and fourth proposals are more complex, but may be of some interest to the committee.

3. *Negative programing Code.*—One part of the Family Hour, which is not being directly challenged in the *Writers Guild* case, requires broadcasters to air program advisories before programs which may not be appropriate for younger viewers. Such advisories, of course, help with parentlal supervision, but they provide very little assistance for unsupervised viewing, or for parents who have difficulty exercising control.

Some parents might like to be able to purchase a television set which was incapable of receiving such programs. The technology would be similar to that used in over-the-air pay television. Along with the audio-visual advisory, each station would transmit a coded message which would be transmitted throughout the show. Television sets could be built with a device which would turn the set off automatically when such a code was transmitted.

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[6] There can be little doubt that such technological advances would be constitutional. Improved technology would in no way abridge freedom of speech and the press, and the courts have held that Congress can require such advances where they are required, for example, by the public health or safety. In the broadcasting field Congress has enabled the FCC to require manufacturers to make UHF available on all new television sets. All Channel Receivers Act, 47 USC § 303(s) (1962).

This proposal, according to Dr. Goldmark, is feasible but technologically more complex. It would, of course, be costly for broadcasters as well as for those who purchase the sets, since the broadcaster would have to transmit the coded message. Dr. Goldmark estimates that this idea, combined with the two locks, might add about $50 to the retail cost of a television set.

(4) *A Weekly Program Selector.*—For some families the ideal arrangement might be to make all their television-viewing choices at the beginning of the week. I am sure that many families at present go through *TV Guide* to select the shows which they want to watch, as well as those which they want to be certain to avoid. Such families might like to be able to program their television set a day or a week in advance, to select shows which they want to watch and exclude shows which they don't want to watch.

A program-selection device with a daily or weekly timer could be attached to the on-off and station-locks described earlier. This would enable parents to be certain that their children could only watch programs which the parents decreed suitable. Instead of supervising children's viewing on a minute-to-minute or hour-to-hour basis, this would enable parents to exercise control by making program selections once a day or once a week.

A program selector would probably be too elaborate and would almost certainly be too expensive for most families. While Dr. Goldmark says that it would be technologically feasible, he says that it would add about $150.00 to the cost of each television set.

In conclusion, I would like to emphasize that the proposals I have made today are designed to create diversity and to increase the ability of parents to supervise their children's viewing. It is my firm belief that if we can make television a free and diverse marketplace, where individual families are able to make meaningful choices, we will have satisfied those legitimate citizen complaints which led to the creation of the Family Viewing Hour and which are the proper concern of this committee's hearings.

CBS MEMORANDUM

TJS - Don't know enough back-ground to mark those I have left blank.
JAS 6/23

Accept Regret Fu
Appropriate action
Background? Status?
Fyi Note & Return
Phone JAS Comment
Reply Direct
Suggest reply File
To discuss No file
Recommendation
Copy to JAS URGENT

FROM: Tom Swafford (CTN)
TO: MESSRS. SCHNEIDER, WOOD, KIRSCHNER, CURRLIN
DATE: June 20, 1975

As he approaches the lamentable chore of being Arbiter in questions of Family Viewing, Stockton Helffrich is seeking guidance. He's asked each member of the Code Review Board to fill out the attached questionnaire. There are no names, nothing is identified by individual, station or network.

Before I fill this thing out, I'd welcome your guidance. Possibly there's a consensus; also possibly there isn't. Which will only underscore the imprecision with which we deal as we lurch and fumble in the Vineyard.

THOMAS J. SWAFFORD
JUN 24 1975
AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

JOHN A. SCHNEIDER
JUN 23 1975
AM 8,9,10,11,12,1,2,3,4,5,6,7 PM

[redacted]

E. Cumulativ[redacted] despite otherwise [redacted] components

F. Unsuitable for the average child

G. Unsuitable for the emotionally disturbed child

H. Other? Please comment:

PRIME TIME FAMILY PROGRAMMING
SOME EXPLORATORY QUESTIONS

I. Content considerations/criteria

1. "....the history of the proposals has given the industry to understand what the prohibition embraces: programs involving sexual candor, gratuitous violence and subject matter considered too sophisticated or risqué for juveniles." (Les Brown, N.Y. Times, April 10, 1975).

Agree ✓

Disagree

Comment:

2. In your opinion which among the following would trigger the new rule's "inappropriate" definition?

A. Mature theme & dialogue ✓

B. Over-all adult orientation

C. Sensitive/controversial for hour of broadcast

D. Lack of discretion/taste ✓

E. Cumulatively tense despite otherwise acceptable components

F. Unsuitable for the average child ✓

G. Unsuitable for the emotionally disturbed child

H. Other? Please comment:

3. Do you believe that action/adventure programs involving depictions of violence, regardless of how limited and how well handled, will be appropriate for prime time family viewing? Yes or [✓ No]

4. Do television renditions, responsibly handled, of classic adult or children's stories, books and plays involving violence pass under the prime time family viewing standard? [✓ Yes] or No

Comments:

5. Among considerations affecting the appropriate treatment of violence in the prime time family programming period which among the following do you consider best?

A. Specific current Code language ______

B. Potential guidelines additional to "A" above ______

C. The Heller/Polsky guidelines for the evaluation of violence ______

D. An amalgam of the above ______

E. Other? YOur comments please:

6. How do you define "sexual connotations"?

A. Romantic interpersonal relationships; flirtations/courtship ______

B. Overt sexuality; petting; implied sexual actions; .etc. ✓

C. Does your choice in A. or B. above distinguish between audio and video? Yes or [✓ No.]

Comments:

Which is more important in your opinion. Please

check: Audio______________________

Video______________________

Both ✓______________________

D. Other? Your comments please:

7. On #6 above, what criteria do you recommend?

A. No sexual allusions whatsoever______________

B. Nothing too advanced for children under 12 ✓______________________

C. No "spelled out" reflections of sexual concepts; handling allowing inferences based on individual viewers' experience______________

D. Other? Your comments please:

7. Language criteria for the prime time family programming period:

   A. No strong language (hells/damns/deity references/coarse expletives)________

   B. No smut or vulgarity____✓____

   C. No obscene, profane or indecent material as proscribed by law____✓____

   D. Other? Your comments please:
   An occasional Hell or Damn
   but in context -
   Not gratuitous as N. Lear does.

II. Advisories

1. What comprises "....the occasional case" that would trigger the advisory requirement in the prime time family programming period?

   A. One entry in every thirteen episodes ____✓____
   B. " " " " twelve " ________
   C. " " " " eleven " ________
   D. " " " " ten " ________
   E. " " " " nine " ________
   F. " " " " eight " ________
   G. " " " " seven " ________
   H. " " " " six " ________
   I. " " " " five " ________
   J. " " " " four " ________
   K. " " " " three " ________
   L. " " " " two " ________
   M. Undecided " ____✓____

2. What number of "suitable for family viewing" episodes do you believe required to separate those "occasional" cases where advisories are employed?

A. One episode separating those with advisories: ____

B. Two episodes " " " " ____

C. Three " " " " " ____

D. Four " " " " " ____

E. Five " " " " " ____

F. Six " " " " " ____

G. Undecided ____

3. Would you accept two episodes requiring advisories in the prime time family program period if said episodes were in sequence? ____ Yes or [✓ No]

III. Challenging procedures/groundrules for the Code Authority

1. Assuming that challenges as to the appropriateness of programming included in the prime time family program period may come from one or more of various sources, please indicate which of the following, if any, you would believe the Code Authority need not honor:

A. Individual viewers

B. Program producers

C. Special interest groups

D. Medical/scientific/professional sources

E. Government figures

F. Code subscribers

G. NAB non-Code members

H. Non-NAB/non-Code broadcasters

2. Do you believe the Code Authority should establish requirements for the making of a challenge?

   Yes_____ No______

3. Check which of the following challenge requirements you believe are reasonable for the Code Authority to request:

   A. Program title, date viewed, broadcast facilities over which seen ____________________

   B. Segment/segments of program challenged __________

   C. Rationale for challenge ______________________

   D. Other? Your comments please:

IV. Among appropriate follow-up actions in response to challenges, which among the following do you favor?

   A. Code Authority screening and ruling ________________

   B. Committee of Code Board broadcasters, (en banc or via closed circuit) screening and ruling _________

   C. Group of non-Code broadcasters, (en banc or via closed circuit) screening and ruling _____________

   D. Group of non-broadcasters, (en banc or via closed circuit) screening and ruling ________________

   E. Full Code Board (en banc or via closed circuit) screening and ruling _____________________________

   F. Other? Your comments please:

CBS MEMORANDUM

FROM: Dick Kirschner (CTN-H)
TO: MR. THOMAS J. SWAFFORD
DATE: June 24, 1975

Tom - I've taken the liberty of scribbling some notes on Stockton's questionaire. If you disagree with any of them please advise. If you disagree with all of them I will take my body to the mount where I will don sackcloth and ashes, eat nothing but tacos and prunes, and meditate for a year. By that time the whole damn thing may have blown over.

Note: The opinions expressed on the attached form are mine and may not necessarily be those of the management. I I wish they were!

THOMAS J. SWAFFORD
JUN 26 1975
AM PM
7,8,9,10,11,12,1,2,3,4,5,6
4

Dick

Att.

D. Lack of discretion/taste X

E. Cumulatively tense despite otherwise acceptable components ?

F. Unsuitable for the average child X

G. Unsuitable for the emotionally disturbed child ?

01925

H. Other? Please comment:
Any material which may be considered as inappropriate (and offensive) by a significant portion of the viewing audience.

Ex. 236

PRIME TIME FAMILY PROGRAMMING
SOME EXPLORATORY QUESTIONS

I. Content considerations/criteria

1. "....the history of the proposals has given the industry to understand what the prohibition embraces: programs involving sexual candor, gratuitous violence and subject matter considered too sophisticated or risqué for juveniles." (Les Brown, N.Y. Times, April 10, 1975).

Agree X

Disagree________

Comment: In my estimation, the criteria stated above may be the only clear-cut definition of family viewing & the guidelines encompassing it.

2. In your opinion which among the following would trigger the new rule's "inappropriate" definition?

A. Mature theme & dialogue depends on your definition of mature. To some people a vague discussion of pregnancy is too mature for young viewers

B. Over-all adult orientation________

C. Sensitive/controversial for hour of broadcast yes - abortion - the pill - prostit.

D. Lack of discretion/taste X

E. Cumulatively tense despite otherwise acceptable components ?

F. Unsuitable for the average child X

G. Unsuitable for the emotionally disturbed child ?

H. Other? Please comment:

Any material which may be considered as inappropriate (and offensive) by a significant portion of the viewing audience.

3. Do you believe that action/adventure programs involving depictions of violence, regardless of how limited and how well handled, will be appropriate for prime time family viewing? X Yes or No depending on [illegible] meaning [illegible] including conflict [illegible] outcome

4. Do television renditions, responsibly handled, of classic adult or children's stories, books and plays involving violence pass under the prime time family viewing standard? X Yes or ____ No

They must. Comments: If we put such a restriction on this type of programs then such classics as Robin Hood, Peter Pan and Alice In Wonderland would be relegated to the post 9PM time period. Some of Disney's widely acclaimed classics would fall with this category too.

5. Among considerations affecting the appropriate treatment of violence in the prime time family programming period which among the following do you consider best?

A. Specific current Code language ____

B. Potential guidelines additional to "A" above ____

C. The Heller/Polsky guidelines for the evaluation of violence ____

D. An amalgam of the above X

E. Other? YOur comments please: Am not familiar with the Heller Polsky guidelines but I do believe that a strict definition of violence guidelines should be imposed. Even Pastore said that to eliminate violence completely (from TV) would be unrealistic.

6. How do you define "sexual connotations"?

A. Romantic interpersonal relationships; flirtations/courtship no

B. Overt sexuality; petting; implied sexual actions; etc. yes

C. Does your choice in A. or B. above distinguish between audio and video? ____ Yes or X No

Comments:

Which is more important in your opinion. Please

check: Audio__________

Video__________

Both____X____

D. Other? Your comments please:
A lot depends on what the specifics are.

7. On #6 above, what criteria do you recommend?

A. No sexual allusions whatsoever____—____

B. Nothing too advanced for children under 12__________

C. No "spelled out" reflections of sexual concepts; handling allowing inferences based on individual viewers' experience____X____

D. Other? Your comments please:

Blatant + overt sexual material should be avoided in the family hour. However, vague references may be acceptable depending upon the situation. The youthful audience will accept Rhoda's ~~[illegible]~~ tirade at Myra for "dating" prospective clients as just that... dating. The older audience can read between the lines + get the true significance.

2.

7. Language criteria for the prime time family programming period:

A. No strong language (hells/damns/deity references/coarse expletives) irreverent ___X___

B. No smut or vulgarity ___X___

C. No obscene, profane or indecent material as proscribed by law ___X___

D. Other? Your comments please:
On rare occasions, when the situation calls for it "hell" or "damn" may be used. If a man's just discovered that his parked car has been wrecked he's not going to say "gosh or golly gee."

Paraphrasing the words of Arthur Taylor in one of his first drafts of the family hour concept - Advisories should be used only when the material to be presented in any way will upset a significant portion of the viewing audience.
A You cannot attach a number to "occasional use"

II. Advisories

1. What comprises "....the occasional case" that would trigger the advisory requirement in the prime time family programming period?

A. One entry in every thirteen episodes ______
B. " " " " twelve " ______
C. " " " " eleven " ______
D. " " " " ten " ______
E. " " " " nine " ______
F. " " " " eight " ______
G. " " " " seven " ______
H. " " " " six " ______
I. " " " " five " ______
J. " " " " four " ______
K. " " " " three " ______
L. " " " " two " ______
M. ~~Undecided~~ other " ______

2. What number of "suitable for family viewing" episodes do you believe required to separate those "occasional" cases where advisories are employed?

A. One episode separating those with advisories: ____
B. Two episodes " " " " ____
C. Three " " " " " ____
D. Four " " " " " ____
E. Five " " " " " ____
F. Six " " " " " ____
G. Undecided ____

3. Would you accept two episodes requiring advisories in the prime time family program period if said episodes were in sequence? [✓ Yes] or ____ No

III. Challenging procedures/groundrules for the Code Authority

1. Assuming that challenges as to the appropriateness of programming included in the prime time family program period may come from one or more of various sources, please indicate which of the following, if any, you would believe the Code Authority need not honor:

A. Individual viewers in significant numbers should be hon
[✓ B.] Program producers
[✓ C.] Special interest groups
[✓ D] Medical/scientific/professional sources
[✓ E.] Government figures
F. Code subscribers
G. NAB non-Code members
H. Non-NAB/non-Code broadcasters

2. Do you believe the Code Authority should establish requirements for the making of a challenge?

Yes__X__ No______

3. Check which of the following challenge requirements you believe are reasonable for the Code Authority to request:

A. Program title, date viewed, broadcast facilities over which seen ______X______

B. Segment/segments of program challenged___X___

C. Rationale for challenge_______X_______

D. Other? Your comments please:

IV. Among appropriate follow-up actions in response to challenges, which among the following do you favor?

A. Code Authority screening and ruling___X_______

B. Committee of Code Board broadcasters, (en banc or via closed circuit) screening and ruling________

C. Group of non-Code broadcasters, (en banc or via closed circuit) screening and ruling____________

D. Group of non-broadcasters, (en banc or via closed circuit) screening and ruling________________

At least let us be judged by our peers.

E. Full Code Board (en banc or via closed circuit) screening and ruling______________________________

F. Other? Your comments please:

NAB-Tucker – Family Viewing

CBS
TELEVISION
NETWORK
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
Program Practices

Dear Stock:

September 19, 1975

I'm terribly embarrassed about this. You know what I've been trying to do. I've been trying to get some kind of a commitment from somebody other than Program Practices, as to just what it was we had in mind with Family Viewing. My efforts have been fruitless; my persistence unproductive. Well what the hell...

At any rate here, for you, for the ages, is what some of us think Family Viewing is and should be.

You've had more patience on this than Mrs. Judge Crater.

I'm grateful.

Warm regards.

Mr. Stockton Helffrich
NAB Code Authority
485 Madison Avenue
New York, New York

Ex. 342

PRIME TIME FAMILY PROGRAMMING
SOME EXPLORATORY QUESTIONS

I. Content considerations/criteria

1. "....the history of the proposals has given the industry to understand what the prohibition embraces: programs involving sexual candor, gratuitous violence and subject matter considered too sophisticated or risqué for juveniles." (Les Brown, N.Y. Times, April 10, 1975).

Agree ___X___

Disagree ________

Comment:

2. In your opinion which among the following would trigger the new rule's "inappropriate" definition?

A. Mature theme & dialogue ___X___
B. Over-all adult orientation ________
C. Sensitive/controversial for hour of broadcast ________
D. Lack of discretion/taste ___X___
E. Cumulatively tense despite otherwise acceptable components ________
F. Unsuitable for the average child ________
G. Unsuitable for the emotionally disturbed child ________
H. Other? Please comment:

I believe "A" encompasses "B" "C" "E" and "F". Category "G" is a parental consideration.

3. Do you believe that action/adventure programs involving depictions of violence, regardless of how limited and how well handled, will be appropriate for prime time family viewing? __X__ or ______
Yes No

4. Do television renditions, responsibly handled, of classic adult or children's stories, books and plays involving violence pass under the prime time family viewing standard? __X__ or ______
Yes No

Comments:

I do not believe action/adventure series should be barred from Family Viewing time' rather serious consideration should be given the manner in which violence is depicted and the overall impression of the show.

5. Among considerations affecting the appropriate treatment of violence in the prime time family programming period which among the following do you consider best?

A. Specific current Code language __X__

B. Potential guidelines additional to "A" above______

C. The Heller/Polsky guidelines for the evaluation of violence______

D. An amalgam of the above______

E. Other? YOur comments please:
I believe the only effective method of monitoring program material is in subjective analysis, following the present specific Code language.

6. How do you define "sexual connotations"?

A. Romantic interpersonal relationships; flirtations/courtship______

B. Overt sexuality; petting; implied sexual actions; etc.______

C. Does your choice in A. or B. above distinguish between audio and video?
BOTH
______ or ______
Yes No

Comments:

Which is more important in your opinion. Please

check: Audio____________________________

Video____________________________

Both______XX__________________

D. Other? Your comments please:

7. On #6 above, what criteria do you recommend?

A. No sexual allusions whatsoever______________

B. Nothing too advanced for children under 12__________________________________

C. No "spelled out" reflections of sexual concepts; handling allowing inferences based on individual viewers' experience______X________

D. Other? Your comments please:

3. Language criteria for the prime time family programming period:

   A. No strong language (hells/damns/deity references/coarse expletives)__________

   B. No smut or vulgarity____X____

   C. No obscene, profane or indecent material as proscribed by law____X____

   D. Other? Your comments please:
   In the interest of maintaining a semblance of reality in programs scheduled during family hour, I would find the occasional use of hell/damn acceptable in the proper context. Certainly, deletion of all expletives would be unrealistic.

II. Advisories

1. What comprises "....the occasional case" that would trigger the advisory requirement in the prime time family programming period?

   A. One entry in every thirteen episodes________

   B. " " " " twelve " ________

   C. " " " " eleven " ________

   D. " " " " ten " ________

   E. " " " " nine " ________

   F. " " " " eight " ________

   G. " " " " seven " ________

   H. " " " " six " ________

   I. " " " " five " ________

   J. " " " " four " ________

   K. " " " " three " ________

   L. " " " " two " ________

   M. Undecided " ____X____

2. What number of "suitable for family viewing" episodes do you believe required to separate those "occasional" cases where advisories are employed?

A. One episode separating those with advisories: ____
B. Two episodes " " " " ____
C. Three " " " " " ____
D. Four " " " " " ____
E. Five " " " " " ____
F. Six " " " " " X
G. Undecided ____

3. Would you accept two episodes requiring advisories in the prime time family program period if said episodes were in sequence? X Yes or ____ No

III. Challenging procedures/groundrules for the Code Authority

1. Assuming that challenges as to the appropriateness of programming included in the prime time family program period may come from one or more of various sources, please indicate which of the following, if any, you would believe the Code Authority need not honor:

X A. Individual viewers
X B. Program producers
X C. Special interest groups
X D. Medical/scientific/professional sources
X E. Government figures
F. Code subscribers
G. NAB non-Code members
H. Non-NAB/non-Code broadcasters

2. Do you believe the Code Authority should establish requirements for the making of a challenge?

Yes___X___ No_______

3. Check which of the following challenge requirements you believe are reasonable for the Code Authority to request:

A. Program title, date viewed, broadcast facilities over which seen _____X_____________

B. Segment/segments of program challenged___X_____

C. Rationale for challenge_____________________X_____

D. Other? Your comments please:

IV. Among appropriate follow-up actions in response to challenges, which among the following do you favor?

A. Code Authority screening and ruling_______X_______

B. Committee of Code Board broadcasters, (en banc or via closed circuit) screening and ruling_________

C. Group of non-Code broadcasters, (en banc or via closed circuit) screening and ruling_____________

D. Group of non-broadcasters, (en banc or via closed circuit) screening and ruling________________

E. Full Code Board (en banc or via closed circuit) screening and ruling________________________________

F. Other? Your comments please:

[From Variety, Jan. 8, 1975]

FCC's Access Rule Torpedoed Kidvid's Greatest Opportunity

(By Bob Knight)

In recent years, a wide spectrum of citizens, from then-FCC chairman Dean Burch to the activist ladies of ACT, have been plumping for a concentrated effort by the commercial networks to do something worthwhile in the children's programming genre in primetime.

Yet, a case can be made that during 1974, primetime kidvid's time finally came—and went—with hardly a peep out of anybody in protest. The old maxim says there is nothing so powerful as an idea whose time has come; every indication last spring was that kidvid's time in the primetime sun was imminent. A judge's decision, in effect ordering the cutback of each network's amount of primetime hours, knocked the timing into a cocked hat—and it is highly unlikely that the time will be exactly that right again anytime in the immediate future.

Specifically, the reference here is to CBS-TV's announced plans to program children's specials in the half-hour from 7:30 to 8 p.m. on Saturday nights during the 1974-75 season—as permitted by then-relaxed FCC primetime rules. ABC, as well, had made plans to program six hours of "quality children's specials" in the 7 to 8 p.m. prime access slot on Saturdays—which would have had additional impact on the overall kidvid-in-primetime breakthrough—but the CBS plans had the ring of being the programming device that could bring children's primetime programming to a new and important plateau.

BEFORE "FAMILY"

The CBS project, spelled out by program veepee Fred Silverman at the web's May affiliates convention, was to program 46 weeks of kid specials in the 7:30 p.m. Saturday timeslot immediately before "All In the Family," with the six remaining weeks of the year to be made available for local programming. Silverman noted at that time that past experience had shown that the kind of children's specials CBS had in mind "also have substantial adult appeal" and might be called "all family in their reach."

Consequently, he said, the network hoped "to capture very large audiences" in the time period, because of its proximity to "Family." The overall plan, at that time, was to have a balanced mix of half animated and half live-action programs, with more than half of the programming skedded to be originals rather than repeats.

With all due respect to the advocates of children's programming reform and improvement, it is never going to happen at the commercial network level until a profit-making prognosis is part of the scheme—which makes Silverman's expectation of "very large audiences" a most vivid indication that CBS was prepared to succeed. If ever kidvid could earn its own way in primetime, the pre-"Family" slot was the place to do it. And tv being an imitative business, it can safely be predicted that had CBS made it pay, ABC and NBC would have been into kidvid programming in primetime with a vengeance the following season. If CBS' programming plans were not a giant ripoff, children's programming's time had indeed come.

A look at the planned roster of CBS kidvid specials for the timeslot is therefore very much in order. By the time the Federal Court ruling cut back the FCC primetime relaxations in late summer, the lineup had been fleshed out to include 56 half-hours from a wide variety of suppliers (another aspect of programming that the FCC prime access rule was conceived to achieve). CBS to this day has remained curiously shy about revealing its budgetary plans for the time period (perhaps because it would be thought guilty of blowing its own horn about what is now a dead horse), but an educated guess, acknowledging the costs of animated programs, would put the cost of one year's kidvid specials output for that one time period in the vicinity of $10,000,000.

The kidvid slate was to include six Dr. Seuss cartoons, five of them repeats and one new; "Frosty the Snowman" (a repeat) and "Twas the Night Before Christmas"—both seasonal shows; repeats of Potterton Productions of Canada's "The Selfish Giant" and "The Little Mermaid"; two "Jungle Book" specials ("Rikki-Tikki-Tavi" and "The White Seal") from Chuck Jones—and a repeat of each; the three-part "8 Stages of Man"; four "Fat Albert" cartoons (and four repeats); Maurice Sendak's "Really Rosie Starring the Nutshell Kids" with original songs by Carole King; a "B.C." cartoon, and a repeat of Billy Cosby's "Aesop's Fables." These titles were all animated vehicles.

On the live-action side, CBS News was to supply three "30 Minutes" magazine-formatted programs, similar in form but not in content to its "60 Minutes" and "Magazine" series; six 30-minute National Geographic specials were in the works (to be sponsored by Western Electric); five half-hours of drama under the "Addie" umbrella title were to be made, featuring Lisa Lucas in the role she had played in CBS primetime specials. "A Thanksgiving Treasure" and "The House Without a Christmas Tree," with scripts from Gail Rock whose stories were the basis of "Treasure" and "House." The "Addies" would all be repeated once. Also four "Huck Finn" specials were planned, two of them from MGM-TV, and airings of programs based on "The Borrowers," which had previously been aired as an NBC Hallmark Hall of Fame 90-minute special.

Of that potential roster, 11 programs have been salvaged (or had to be salvaged because the animation work was too far advanced to abandon the project). All six of the Dr. Seuss' will air this season "Frosty" and "Night Before Christmas" aired during the pre-Yule period and "Aesop's Fables" has also had an airdate. "Rikki-Tikki-Tavi" is skedded for telecasting in early 1975, as is Sendak's "Rosie."

NECROLOGY

The rest are gone or questionable. The "Huck Finns," the "30 Minutes," the half-hour National Geographics, "The Borrowers," and the "Addies" are dead, the "8 Stages of Man" project has been postponed, and the "Fat Alberts," the Potterton programs, "B.C.," and "The White Seal" are not currently planned as CBS primetime shows—although that might change before the full season is completed.

Would the kidvid specials series have been a ratings success? In general, the prognosis is "yes," based on some evidence already on the books. The two "Dr. Seuss" repeats aired so far this season logged a 28.9 rating and 42 share and a 20.5 and 35 share, respectively. "Frosty" scored a 25.0 and 39 share, "Night Before Christmas" a 27.0 and 41 share, while "Aesop's Fables" had a 13.3 and 23 share in the diminished sets-in-use period on Dec. 23, just before Christmas.

Was the quality worth all the effort? Again, there is some way to check it. "Night Before Christmas," already aired, received a favorable press reaction. Jones' "Rikki-Tikki-Tavi" airs on Jan. 9 and Senkak's "Rosie" on Feb. 19—and both can be judged on their merits by the reader inclined to make an appraisal.

The intention here is not to presume that a "golden age of kidvid tv" was in the wings, but rather that a pragmatic and economically feasible plan was on the verge of getting a fair test in an advantageous time period. The results, if they were favorable, would have meaningful impact on the prime movers—ad agencies and clients—who would eventually underwrite the costs of quality primetime kidvid. There is no authoritative way to fathom the future and to say yea or nay as to whether the time, the place and the inclination will all come together again at the proper time—but the guess is "no, not in the immediate future."

Just within the past few weeks, the FCC has again said that commercial networks can program news, special events and kidvid programming in the prime access time periods. That pronouncement normally would trigger the same forces that combined for the CBS spring of 1974 decision, except for the fact that practically everybody in the industry expects another legal test of that FCC rule—with no tangible guarantee that the legal interpretation of the forthcoming test will not go the same route as the test that led to the cutback in late summer this year.

With such iffy prospects abroad, it hardly seems likely that the efforts required to mount a project similar to CBS' 1974 plan will be expended by either of the three webs of possibly be far enough along, if they did, to be capable of inclusion in 1975-76 primetime scheduling decisions in late spring. The current state of the economy, with its inflation and recession overtones, hardly enhances the prospects of ticketing the large amount of money necessary for such a project—especially in the time-consuming, expensive animation area.

All of which makes it that much more regrettable that amid all of the hullaballoo when the FCC primetime rule was cut back by the Federal court, the possibility of a well-financed thrust toward qualitative kidvid shows in prime-time crashed silently and without an outraged cry from the professional and amateur advocates of such fare. Primetime kidvid's moment of truth may have perished in a vacuum and may never pass this way again.

Mr. VAN DEERLIN. Thank you, Mr. Cowan.

I suppose that while your second set of suggestions apply with great imagination to what concerned parents might do, they take really no note of the alarming statistic that despite family viewing hours, there are still about a million children watching television at midnight. These are obviously in homes where there is little or no concern for what the children are watching, and I suppose that while these might be a great boon to the concerned families, they might not address the problem that Dr. Gerbner of Pennsylvania is talking about when he considers the effect of TV violence on present and future citizens.

Mr. COWAN. Mr. Chairman, of course I agree that that is true. There are limits to what this committee can ever do. The availability of video cassettes, for example, is going to take out of the control of this committee, and the FCC altogether, probably, any decision over what can be shown in a family environment.

But I would note that there are important advances, such as the safety caps on aspirin bottles, to pick one that is fairly simply, which do require a parent's purchasing decision. The parents can easily still buy aspirin bottles—they are still sold—which the child can easily open.

I suppose, to some extent, we have to do what we can and assume that the family unit will remain the primary place where these decisions should be made.

Mr. VAN DEERLIN. Mr. Waxman.

Mr. WAXMAN. Well, I want to thank you for your testimony, because it shows some imagination and creativity in looking at areas where we heretofore hadn't really been directed.

Your first point is that Congress and the Government may well have the authority to direct not the content of programing but to direct diversity in programing, and you talk about mandating children's programing, and I assume that the networks would be violently opposed to it because they would, for the most part, lose the ratings to the competing channels that would be showing a regular bill of fare.

Mr. COWAN. If I could interrupt at that point, I am sure that would be a concern that they would start off with. I, in the longer testimony, refer to an article from "Variety," which I am going to supply to the committee for inclusion in the record, if you like, which describes the ratings which the children's specials have gotten on CBS.

What happened was, CBS went far enough in this process to have actually commissioned a few of these shows to be made. Those shows were then broadcast as specials and did extremely well in the ratings.

So that I think it is quite possible that the children's shows would do well, and what I think the networks would do is to design shows which were primarily aimed at the younger audience but which were of great interest to older audiences, as well, and my guess is that we would then have a competitive system in which the shows would do well economically and competitively.

Unfortunately, I don't think this is something the networks are going to take the initiative in doing, and I agree with you, they would resist it, but I am not sure that the basis of their resistance would be justified.

Mr. WAXMAN. The basis of their resistance being the loss of profits, which may not be the basis of our concern.

Mr. COWAN. Correct.

Mr. WAXMAN. Well, if you mandated children's programing, I assume you are mandating it on prime time for one station one night, another station another night; not all stations at the same time?

Mr. COWAN. Correct. In fact, it is essential to my understanding of what the first amendment would require, that this not reduce diversity, which would happen if you had only children's programing on all three networks at once. I think that part of the notion would be that the other networks would counterprogram, and you would have a diverse bill of fare every evening at each of those hours.

Mr. WAXMAN. Do you see any danger to having the policymaking body, either the FCC or the Congress, being lobbied by other pressure groups who would like to have their kind of programing?

What you say for children's programing, I am sure, would be applicable to senior citizens. One of the complaints that I had heard was that "The Lawrence Welk Show," which had enromously high ratings, was cancelled because the age group that watched it was primarily older people, and that wasn't the group that would sell the most products for those commercial advertisers, or the senior citizens do not have the programing that they might feel they are entitled to. Then you also get into the question of various ethnic groups that would like to also see their particular programing of any kind over diversified TV scheduling.

How would you answer that potential dilemma?

Mr. COWAN. Well, in the first place, some of that does already exist. There are some—the FCC, in a variety of ways, does either require or encourage certain specific kinds of programing, and that includes programing designed for certain ethnic groups.

For example, WLBT, in Jackson, Miss., the station license was removed partly because they had not provided programing for the black citizens of Jackson, so that, of course, that kind of requirement does exist already.

In the news and public affairs area, the FCC has made it clear that there has to be some news and public affairs on broadcasting stations and in the children's area, indeed, and Dr. Pierce, of course, is well familiar with this, since he was at the FCC at the time that the work on the children's report was done.

The FCC currently does require children's programing. The point is that there is no clear guideline of when it is supposed to be done, and it hasn't been implemented and doesn't seem to have had any real effect; at least not on prime time programing.

But there already are requirements of that kind. I think it is a very delicate job for decisionmakers to decide which ones are valid and which ones are not, and ultimately, I would not think either that an FCC or a congressional committee, which threw its hands up in despair, was without reason in doing so.

But let me say that I think I am here proposing something which you could do. I think it is something you should consider, and that the FCC should consider. I am not sure whether in the end you would decide to do it, but I would note that children have always been treated, and are in a variety of ways through legislation, treated as a special class, in ways beyond any other group, because they need the protection of Government in a way that most other groups do not.

Mr. WAXMAN. And I would have to say, from my own observation, that the notion of the family viewing concept was directed toward the notions of children watching TV. The assumption was that children would be asleep by 9 o'clock on the two coasts, and by 8 o'clock in the Midwest.

Mr. COWAN, If I could interrupt to make a comment about that, and I will supply the committee with documentation on this later, if you are interested; actually, the NAB, at the time that it adopted the family hour rule, had available to it studies which did compare the viewing populations in the three time zones, and those studies indicated that actually, there was one time zone in which a higher proportion of children were watching television during the 8 to 9 period. That time zone was the central time zone.

Mr. WAXMAN. And why do you assume that the central time zone was 6 to 8 p.m., as opposed to 7 to 9 p.m., given that statistic?

Mr. COWAN. I don't want to get into the substance of the family hour lawsuit, but there is a footnote in the report to Congress that the FCC made, in February 1975, in which they state that the reason for it, the reason why the FCC found this acceptable, this exception for the Middle West, was because of the greater economic cost of changing the programing arrangements. It would have required direct lines to be—a separate programing entirely for the Middle West, and that that greater cost was considered the reason for not doing it.

Mr. VAN DEERLIN. Will the gentleman yield?

Mr. WAXMAN. Yes.

Mr. VAN DEERLIN. At our Denver hearing a month ago, a leading broadcaster there, the head of a chain of five or seven stations, testified that there was no cost factor. He said the 10 o'clock news time habit in the Central and Mountain States came about because the coasts were on one time and the interior on another. Everyone acquired the habit of watching the late news at 10 o'clock and going to bed. The lates news thus became a profitable part of the local station's revenue, and there was no way they were going to budge those schedules.

Therefore, when family viewing came on, without any regard to cost, it just automatically was 8 o'clock in the interior, because of the need to keep all the programing an hour ahead to get the late news at 10 o'clock.

Mr. COWAN. Mr. Chairman, my guess is that he was speaking from the point of view of the individual station owner, for whom there would be otherwise no increased cost.

From the point of view of the networks, who were the ones engaged in negotiations with the FCC, they may have had in mind the problems that their affiliates would perceive with their local revenues, but they would have to absorb increased costs, because, at the moment, there is only one broadcast which goes out to the eastern time zone and the central time zone. It is not broadcast simultaneously.

There would have to be a second transmission an hour later for the Middle West, if you were going to have the Middle West time zone be treated in the same way, so it would be an additional cost.

Mr. VAN DEERLIN. Perhaps this, again, is in the nature of information that might be made available to us by the networks in the fullness of time.

Mr. WAXMAN. If and whenever we hear from them. I would certainly think we would want to probe that.

I just want to explore your first amendment difference between an opposition to the family hour that would say in certain time slots, we are going to have programs directed towards certain viewers;

that is 7 to 9, we are going to have programs directed toward family viewing, which would include children.

Mr. COWAN. My proposal is that it be primarily aimed at children during that hour.

Mr. WAXMAN. Well, why can't one who supports the family viewing concept argue that, in fact, that is what they have done; that they have said between 7 to 9 o'clock all of the networks would try to direct their programs to fit into the viewing by children. If they phrased it differently, would you feel satisfied on the constitutional objections?

Mr. COWAN. Would I be satisfied on the constitutional objections?

Mr. WAXMAN. That is right.

Mr. COWAN. Do you want me to try to propose something which the networks could have said, which I would think would be acceptable constitutionally?

Mr. WAXMAN. No. I am trying to explore the constitutional difference.

Mr. COWAN. I think there are things that the networks could have done, and definitely could do, which would be constitutional, but they didn't do them. What they did was to adopt the rule which says that nothing which is inappropriate for general family viewing can be put on the air. They didn't say there has to be anything which is appropriate or designed for family viewing.

Mr. WAXMAN. Had they stated it positively, would you be satisfied with the family viewing concept?

Mr. COWAN. I wouldn't be. I wouldn't be satisfied with it, but I think it is conceivable that it would have produced programing which would be addressed to this concern, which I find of great concern, which is that there is really nothing on the air for younger audiences during that prime time period.

Mr. WAXMAN. Would you have felt it to be constitutional if they had stated it in a positive sense instead of a negative sense?

Mr. COWAN. No. No; the reason I wouldn't is, that I think it would still lack diversity. See, what I say is constitutional is something which enhances diversity. That wouldn't do it by requiring it across the board.

If they had worked out an arrangement, and here I am leaving aside the antitrust problems and the Administrative Procedure Act problems, which are also involved in any challenge to this; but simply on a constitutional basis, if the FCC and the networks had worked out an arrangement by which one network one night would have programing designed for younger audiences, another network would another night, and that everybody would be advised of that, I think from the constitutional standpoint, that that would have been acceptable, and I might note that Newton Minnow, when he was the chairman of the FCC, in 1961 and 1962, did try to do just this.

He proposed that the networks have kind of a staggered children show arrangement, and he gave I think a couple of speeches to the Radio and Television Society in New York in which he said that Robert Kennedy, then the Attorney General, and a man who, Chairman Minnow pointed out, was not without concern for young children, having a great many of his own, had said that, from his point of view, an agreement between the networks of this kind would be exempt from antitrust considerations.

I think that kind of an arrangement probably would have passed the constitutional muster.

Mr. WAXMAN. Suppose the family doctrine, the family viewing doctrine, had been phrased to say that between 7 and 9 each evening, each station, in its turn, would present programing that would not be offensive to family viewing?

Mr. COWAN. I think that is still unconstitutional, because the not be offensive concept is so meaningless and results in so much censorship of protected material.

Mr. WAXMAN. But suitable for children, or suitable for family viewing.

Mr. COWAN. No, primarily designed for younger children would result in a very different kind of programing.

You see, what the networks have done, what the family hour does, and I think what your proposal would do, is not to try to create programing which achieves diversity for younger audiences. They want to put the same shows on the air that have always been on the air, designed for the older audiences, and so I think frankly would the rule that you are describing; it would simply be a way of making sure that those programs which continue to be designed for the same audience create a little less protest to Congress and the FCC.

That would not be constitutional, in my opinion. The thing which would be constitutional is something designed to achieve diversity; specifically designed to achieve diversity, and to do it with regard to a group which otherwise would not get programing aimed at it.

I think those components have to be there. There has to be the need, it has to be an excluded group, and it has to be truly diverse and genuinely addressed to achieving diversity to be constitutional, but with those requirements, there are a great many things which have been held to be constitutional.

Mr. WAXMAN. In the area of technological innovations, which I find fascinating, and I also have to admit I am not a scientist, and I also have to admit I am not all that creative, it seems to me that one might suggest some technological way of having a rating on a show before it appears on the screen——

Mr. COWAN. Yes.

Mr. WAXMAN. That would send out a shock to a child that would not only warn that the program is not suitable, but may well condition the child to abhor violence.

Mr. COWAN. Well, there are those who believe that color television does that without any rating systems.

Mr. WAXMAN. Well, I just want to say I appreciate Mr. Cowan's testimony. I think it opens up channels for our thinking that shows that the family viewing concept had very limited ranges of notions of what we could do to handle the whole problems of violence on TV, and so I thank you.

Mr. VAN DEERLIN. Mr. Cowan, inasmuch as you are an attorney, and even though we are rich with legal talent on the subcommittee, perhaps you would share with the subcommittee your idea of exactly how section 326 might be amended to accomplish the objective you have outlined to us here.

Mr. COWAN. Are you asking me that question——

Mr. VAN DEERLIN. I am not asking you a question. I am asking you to submit this to us in some prepared form. We want to get a little free work out of you.

Mr. COWAN. I would be delighted to do that, Mr. Chairman, but may I say that, in my opinion, what I have proposed today would not require an amendment of section 326, because I don't construe it as censorship.

The second point I would like to make is that, in my opinion, and we——

Mr. VAN DEERLIN. Well, except that section 326 forbids the FCC from intruding on programing decisions.

Mr. COWAN. No, it doesn't by its terms.

Mr. VAN DEERLIN. Oh.

Mr. COWAN. And the fairness doctrine, for example, otherwise would be a violation of section 326 which requires programing affirmatively; when you put on one side of an issue, you have to put on the other side of the issue, and so would the rules which the FCC has. So, for example, would the exception for children's programing, which is currently contained in the prime time access rule then be a violation of section 326, but the courts have held that it is constitutional, and it is not a violation of section 326.

The second thing I would say is that section 326—and I would actually love to get a little free advice from you; in the course of the family hour case——

Mr. WAXMAN. You get what you pay for.

Mr. COWAN. We are both in that situation.

In the family hour case, a question which the judge in the case asked of the attorneys, and which the attorneys asked of one another, and we all asked of the FCC many times, and it was asked when the chairman of the FCC was on the witness stand, was whether section 326 of the Communications Act does anything more than simply restate the first amendment, and the position I should tell you in advance of asking you my question; that we all came to the conclusion from doing legislative research on it and the history of it, was that at least as far as it appears in the record, we don't think it adds anything or takes anything away from what the first amendment already would have required with regard to broadcasting.

Now, having said that, I know that you were not on the committee in 1934, needless to say, but I wonder from any of your experience, going back, you have any impression as to whether section 326 does mean anything, besides what the first amendment itself states?

Mr. VAN DEERLIN. I can only say that while that is pending in the courts, it would be highly inappropriate to comment.

Thanks for appearing and giving us your testimony this afternoon.

Our next witness will be Mr. Stanley Fleishman, who is general counsel for the Adult Film Association of America.

Mr. Fleishman.

STATEMENT OF STANLEY FLEISHMAN, GENERAL COUNSEL, ADULT FILM ASSOCIATION OF AMERICA

Mr. FLEISHMAN. Mr. Chairman, I am sure that I was not invited to speak here as a counsel for the Adult Film Association of America, but more likely because of my very extensive experience in the

Supreme Court. I argued more than a dozen cases in the U.S. Supreme Court on the subject of censorship.

I was also one of the attorneys for the Smothers Brothers in their first fight on this entire subject. They were the advance guard; they were the ones who got blown up first in this censorship debate.

As I see it, and I disagree with Mr. Cowan, who preceded me on many subjects, and I agree with him on some—as I see it, that notwithstanding the first amendment, and notwithstanding section 326, the Federal Communications Commission might truly be named the Federal Censorship Commission. They engage in censorship, both in terms of so-called affirmative action, of the kind that Mr. Cowan was talking about. They engage in direct negative censorship.

For example, the *Sonderling* case, where the station was punished for a talk show, and those were the fem forums that were very popular for a while, and the FCC said that was inappropriate and a penalty was involved.

For the pending *Pacifica Foundation* case, where the album by George Carlin, a very fine album, was found to be the basis of a penalty against the Pacifica because, presumably, the record was indecent. The issue that was being raised in the record, which is very interesting and very relevant to what we are talking about here, is the use of words and our whole concept of what is good, what is bad.

Mr. Carlin, in the album, was saying it is OK, for example, to yell on television, or at a baseball game, kill the umpire, but if, God forbid, he said, "F--- the umpire," then the whole world was going to come apart. The burden of his record was, "Why is that?" Why is it that, from the FCC point of view, from everybody's point of view, really, it is OK to say "kill," but not "f—"?

I think that, somehow, if we are able to resolve that question, many of the problems that we are dealing with here would, perhaps, fall into place a little bit better.

For example, the FCC has proposed legislation directed at so-called obscenity, more broadly defined than the Supreme Court has defined it, and indecency which has never before been thought to be the proper subject of legal suppression.

But, again, the FCC has not spoken in terms of violence, I mean. We have the notion of giving the FCC more power over an area of life which, as you have heard here and I agree completely, is one that is neglected, really, in the broadcast media, and, instead, we are being encouraged to have more violence.

My position, generally, with regard to the broadcast media, and I have thought about it a great deal, is, ultimately, that the broadcaster must have exactly the same right—no more, no less—than a newspaper.

I know the arguments in terms of the broadcaster has a license, but, that, in a way, only presents the problem in terms of how censorship is worked by Government.

I know the problems of monopoly, and I think the answer there has to be in terms of using the monopoly law.

For example, in my lifetime, we had a monopoly in motion pictures. Ultimately, there was an antitrust case resulting in the *Paramount Pictures* case. Prior to that time, what you had was integration. You had the major producers of film also distributing the film and exhibit-ing the film, and you had that kind of tight monopoly control so that you had limited kinds of film.

Ultimately, as a result of the *Paramount* case, where there was a breakup where production, distribution, and exhibition were not in tight hands, we had the diversity that Mr. Cowan was talking about—in the screen we got diversity—and we were able to open up the screen to an enormous area of human events that heretofore—or theretofore, had been suppressed, including, I might add, a lot on screen that is distasteful, that has excessive violence, that has excessive sex, that has excessive nonsense in it. There is no question about that.

I saw, last night, "The Taxi Driver." Well, 10 minutes of it I didn't see. I could not, for myself, stand the violence on it. That is my taste. I closed my eyes. I suppose if it were on television, I would have gone to another station.

I think that as we approach it, and really the questions that have come out, as I have been sitting here, is: Do we really believe in the first amendment, or do we want to change it? Do we want to say that television is so powerful a medium of expression that we should censor? If we want to do it, we ought to talk in those terms. Then, we can have a good debate.

Should we have censorship? Why should we have censorship? Should we amend the constitution to exempt from the protection of the first amendment the broadcast media?

It is not good—it is not healthy to have euphemisms. It is not good to say:

> We are not engaging in censorship. This is self-regulation. We are not engaging in censorship. This is just for the public interest.

The public interest, as I see it, is found in the first amendment. The public interest is best served when Government keeps its hands off content. That is not to say that we have good content with Government out of the picture. That is not what I mean at all. I agree with much of what the speakers before had said in terms of the poor quality of television, in some particulars, the fact that we really have forced feeding by the broadcasters; but, it is not any different, really, if you think about it, than what we get from the Los Angeles Times. It is the paper in town, and we get what the Los Angeles Times gives us, good, bad, indifferent.

That is, as I see it, what the first amendment is really all about.

Now, we hear a lot about of, "Well, surely, we have to protect the minors, don't we?" I mean, "What are we going to do about the poor kids?"

First of all, I am reminded by a statement that Justice Douglas made, dissenting in a case back in 1966, *Ginsberg* v. *New York*. He said, "The juvenile delinquents I have known are mostly over 50 years of age."

As I read the newspapers and some of the shenanigans of some of your cohorts, Mr. Chairman, I must say that, Justice Douglas knew whereof he spoke.

We have in the Supreme Court a case, which, it seems to me, ought to be kept in very sharp focus, and that is, *Bucker* v. *Michigan*.

The principle there announced was that it would, in a democratic society, be entirely inappropriate to have the level of programing—this case, it was a book involved—the level of communication set by what is, quote, "appropriate for the minor." That would reduce all of us, of course, to being minors.

While we are talking about appropriateness and what is the public interest, I saw a very interesting story in the Los Angeles Times which, unhappily, I did not bring with me, but it was a report from the United Methodist Board of some kind where they came to the conclusion that under the family hour, the women—the position of women, the attitude of society towards women was grossly distorted, much more so than it was on general television.

So, one might say, "Well, the family hour may be OK for kids, but poor for women," or wherever else you want to move in this direction.

I have set forth, Mr. Chairman, at great length, findings from a report which has been much maligned, much neglected, and ought to receive much attention today. That was a report by the Commission on Obscenity and Pornography. It took 2 years for that Commission to bring in its report. A great deal of my money and your money was spent in connection with the work done by that Commission.

Unfortunately, when it was presented to the President, President Nixon said that that was immoral and he knew what morality was, and he was rejecting that Commission report, because it was immoral. I have to say, regretfully, that the Congress, including your House and the Senate, without reading the report, put it on the shelf, and it has been away.

I have prepared a statement [see p. 195], I have some of its findings, at great length. I think that it would be helpful if the Congress were to take a look at it because there is a great deal of wisdom to be found in the entire report.

I would like to read just a brief statement from one of the Commissioners, a Reverend Jones, who was one of the Commissioners on the Obscenity Commission. He was concurring in the general conclusions of the Commission, but, he had a separate statement, and this is part of it, which seems to have a great meaning for this committee.

> I have long been concerned that the burden of blame and the therapy of re-education be focused on the true sources of the sexual crimes and maladjustments which plague our country and its citizens. If certain kinds of books or films had been proven the cause, then, I was quite willing to join in the crusade against them; however, it has been very adequately shown, through our research, that the roots of such behavior lie in the home and in the early years of familial and sibling relationships.
>
> It is good, I believe, to stop chasing what may have been our unconscious scapegoats in the media and to concentrate the energies, instead, upon the kind of re-education of the family, which will make for health and sanity.

Mr. Chairman, you mentioned the fact that one of the suggestions made by Mr. Cowan, with regard to locks on televisions, would be okay for those parents who were concerned, but what about the parents who are not concerned with their children?

Mr. Van Deerlin. What about the children of the parents who are not concerned?

Mr. Fleishman. Yes; that is an enormous problem. It is an enormous problem, but I don't see how Government can take the place of the parent. The best we can do is to get parents to assume responsibilities because, if we are saying, "Well, we have to think about the parent who doesn't take care of his kid," you have to get rid of matches, I guess, because the kid is going to take a match and burn the house up, if nobody is watching him. There is no end to it. I mean, Government cannot take the place of parents, as I see it.

I have set forth, Mr. Chairman, as exhibit C to my statement, an opinion by Judge Bazelon which seems to me to be of great relevance to this hearing. It shows, in enormous detail, how the FCC engages in censorship, by, as he calls it, the raised eyebrow. Censorship by fear; not unlike, at all, the situation that preceded the family hour.

I think that the opinion of Judge Bazelon would be very helpful for the committee in seeing that the kind of war that the FCC, or Chairman Wiley, engaged in as a weapon to whip everybody into line is not new. This was exactly what was done back when the FCC finally took a stand against the fem talk shows that I spoke about earlier, the *Sonderling* case.

But, the truth of the matter is that since the FCC has the power of life and death over a station, the right to revoke a license, the right to kill, really, the station, its power is enormous and its censorial aspects are plain.

Now, having come to the conclusion that there is no room at all for Government, in terms of content, and that includes both affirmative and negative—there is no more room for Government to say that a station has to have something good for kids, something good for seniors, something good for this, that, or the other ethnic group, any more than Government can say, "We are a newspaper." They have to have that. I think that in each instance, Government is precluded by the first amendment from doing so.

Mr. **Van Deerlin**. On what basis, then, does the Commission grant a license and renewal license?

Mr. **Fleishman**. In my judgment, what it should be—I mean, right now, it is in terms of the public interest and convenience. The public interest, as we know, is a concept that is variable and——

Mr. **Van Deerlin**. In the minds of seven commissioners.

Mr. **Fleishman**. Exactly, yes; and not in all seven of them. Sometimes it is four against three.

It seems to me that there ought to be the granting of a license on a relatively random basis. That there should not be any inquiry into the content. It is true that there are limited numbers of channels available, but they are not as limited as they once were, and there are more that could be made available, if the FCC wanted to do so.

I would say that the channels should be opened up. They should be made available on a random basis, without regard to content, that a licensee should not have a license in perpetuity. Theoretically, it is not in perpetuity, now, anyhow. It is renewable every 5 years, but, for practical purposes, it is in perpetuity.

I think that a license should be for a single one 5-year term, and then out. Let somebody else get it. You are going to get diversity in that way.

What you have is: You have such a vested interest. A license, after a while, is worth so many millions of dollars that there is no way in the world that the licensee is going to take a chance, in terms of trying to be a little more creative, a little more exploring.

But, if you had a single term of 5 years, and then somebody else comes in and does the best he can, I think that would be very helpful.

I think, as I indicated before, the use of the antitrust laws would be of extreme assistance here. I think that we have a monopoly situation. The networks, now, do have monopolistic control. I think if they didn't have stations, that would be a good beginning. I think that limitations could be imposed in terms of not having a particular radio station or television station down, hand and foot, to CBS, or one of the other networks, if there was more fluidity, in terms of giving them options to choose what they want.

I think that what Mr. Cowan said in terms of that there ought to be programs for children is right. I think one way that it might be explored is through public broadcasting. We have public broadcasting now. What we ought to say is, "Use it in a creative way to get on the air what we want, and then have open and free competition with the broadcasters." I think that, with public broadcasting, with a broad-based Board of Directors, so that it is, hopefully, not weighted in any one particular direction too much, at least, that we would have the opportunity for having the kind of ballet, children's programs, senior programs, and all the rest that we do think of as valuable, and is valuable, that ought to be there, without having Government come in on private persons and doing what 326 said, that FCC should not do, because, notwithstanding the first amendment, notwithstanding 326, the FCC is very aggressively, very actively, presently engaged in censorship.

Thank you, Mr. Chairman.

[Testimony resumes on p. 244.]

[Mr. Fleishman's prepared statement, with exhibits A, B, and C, follows:]

STATEMENT OF STANLEY FLEISHMAN,
GENERAL COUNSEL,
ADULT FILM ASSOCIATION OF AMERICA

I am an attorney, a member of the firm of FLEISHMAN, BROWN, WESTON & ROHDE, duly licensed to practice law in the states of California and New York, and the United States Supreme Court. I have had a great deal of experience handling censorship cases at every level of government.

In the United States Supreme Court I argued the following cases: *Alberts v. California*, 354 U.S. 476; *Smith v. California*, 361 U.S. 147; *Quantity of Copies of Books v. Kansas,* 378 U.S. 205; *Austin v. Kentucky*, 386 U.S. 767; *Blount v. Rizzi*, 400 U.S. 410; *United States v. 37 Photographs*, 402 U.S. 363; *Kaplan v. California*, 413 U.S. 115; *Hamling v. United States*, 418 U.S. 87; *Hicks v. Miranda*, 422 U.S. 332. Additionally, I obtained judgments in the United States Supreme Court, following the filing of petitions for writs of certiorari, in the cases of *Aday v. United States*, 388 U.S. 447; *Books, Inc. v. United States*, 388 U.S. 449; *Quantity of Copies of Books v. Kansas*, 388 U.S. 452; *Corinth Publications, Inc. v. Wesberry*, 388 U.S. 448; *Felton v. City of Pensacola*, 390 U.S. 340; *Rabeck v. New York*, 391 U.S. 462; and *Smith v. California*, 375 U.S. 259.

I have addressed a Judges' Conference in Fresno, California, a District Attorneys' Conference in Arizona, State Bar conferences in Iowa and California, as well as a large number of local Bar Associations. I have testified before legislative committees in Oregon and California.

I am general counsel for the Adult Film Association of America, an organization steadfastly opposed to censorship.

The views of the Adult Film Association were presented in a paid advertisement which appeared in the Washington Post last year, calling on the people and the Congress to abolish the unamerican obscenity laws.[1] The advertisement states that censorship is dangerous, hypocritical, and the eternal enemy of freedom and liberty. Asserting that we have had enough censorship by "Big Brother", the advertisement says:

> "Americans deeply value the right of individuals to determine for themselves what books they wish to read and what pictures and films they wish to see. Our traditions of free speech and free press also value and protect the right of writers and film makers to serve the diverse interests of the American public."

In addition to representing the Adult Film Association of America, I have, for four years, been a member of the Board of Trustees of the Freedom to Read Foundation, an affiliate of the American Library Association.

Finally and perhaps most importantly for present purposes, I represented (with my colleague George Slaff) the Smothers Brothers in their successful litigation against CBS, arising out of the firing of the Smothers Brothers because their television performances were thought to be too "offensive" for the American viewing public.[2]

II

Mason Williams, one of the original writers of The Smothers Brothers Comedy Hour, wrote a poem touching most of the issues involved in the hearings of this subcommittee:

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[1] A copy of the advertisement is attached hereto as Appendix "A".

[2] Attached hereto as Appendix "B" is an article I wrote in Censorship Today (Aug./Sept. '69) entitled "Smothering the Smothers Brothers", relating the events leading to the firing of the Smothers Brothers.

"THE CENSOR"

"The Censor sits
Somewhere between
The scenes to be seen
And the television sets
With his scissors purpose poised
Watching the human stuff
That will sizzle through
The magic wires
And light up
Like welding shops
The ho-hum rooms of America
And with a Kindergarten
Arts and crafts concept
Of moral responsibility
Snips out
The rough talk
The unpopular opinion
Or anything with teeth
And renders
A pattern of ideas
Full of holes
A doily
For your mind."

In December 1969, the National Commission on the Causes and Prevention of Violence issued its final report entitled "To Establish Justice, to Insure Domestic Tranquility". In discussing the "American Ideal", the Commission attempted to spell out the nub of the American way of life. The Commission's views - as they apply here - may be briefly summarized as follows:

A. In a democratic society, dissent is the catalyst of progress. The ultimate viability of the system depends upon its ability to accommodate dissent.

B. In a democratic society such as ours, the government's ideals are governed by the rule of law, equality before the law, and ultimate control of the law-making process by the people.

C. We have a restless and jealous insistence on the utmost range of freedom for the individual and a zeal to confine the authority of the State within constitutional dikes.

D. We believe with Jefferson that the just powers of government are derived - and can only be derived - from the consent of the governed. We are an independent stiff-necked people, suspicious of power, and hardly docile before authority. We never hesitate to challenge the justness and the constitutional propriety of the powers our government and other social institutions assert. In the robust and sinewy debates of our democracy social change is encouraged. The great purposes of the explicit social compact of the Constitution include saving the people from autocracy, and protecting the individual from the arbitrary or capricious exercise of power by government.

E. We recognize the fallibility of government. A basic feature of the Constitution, made explicit in the Ninth and Tenth Amendments, is that rights not delegated to government are reserved to the people. The idea these amendments represent is that in a final sense the people are their own governors.

F. In a multitude of ways the Constitution assures the individual a wide zone of privacy and freedom, including, of course, freedom of speech and the press. Through the First Amendment, the Constitution seeks assurance that society will remain open and diverse, hospitable to freedom, and hostile to the suppression of unpopular views.

G. We are a pluralistic society dedicated to respecting the rights and views of those who differ from us.

Approximately one year later, the Commission on Obscenity and Pornography submitted its report to President Nixon, recommending that federal, state and local legislation prohibiting the sale, exhibition or distribution of sexual materials to consenting adults should be repealed. The Commission concluded that there is no warrant for continued governmental interference with the full freedom of adults to read, obtain or view whatever sexually explicit material they wish. The Commission's conclusion was based upon the following considerations:

A. Extensive empirical investigation provides no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crime, delinquency, sexual or non-sexual deviancy or severe emotional disturbances. This empirical investigation supports the opinion of a substantial majority of persons professionally engaged in the treatment of deviancy, delinquency, and antisocial behavior, that exposure to sexually explicit materials has no harmful causal role in these areas.

B. Studies show that a number of factors, such as disorganized family relationships and unfavorable peer influences, are intimately related to harmful sexual behavior or adverse character development. Exposure to sexually explicit materials, however, cannot be counted as among those determinative factors. Exposure to such materials appears to be a usual and harmless part of the process of growing up in our society and a frequent and non-damaging occurrence among adults.

C. Exposure to sexually explicit materials has positive aspects. Such materials are sought as a source of entertainment and information by substantial numbers of American adults. These materials also appear to serve to increase and facilitate constructive communication about sexual matters. The most frequent purchaser of explicit sexual materials is a college-educated, married adult, in his 30s or 40s, who is of above average socio-economic status.

D. Legislative attempts to control sexually explicit materials are extremely unsatisfactory. All attempts to separate "good" speech from "bad" speech call into play vague and highly subjective aesthetic, psychological and moral tests which do not provide meaningful guidance. As a result, law is inconsistently and often erroneously applied and the distinctions made by courts between prohibited and permissible materials, often appear indefensible. Errors in the application of the law and uncertainty about its scope also cause interference with the communication of constitutionally protected materials.

E. Public opinion in America does not support the imposition of legal prohibitions upon the right of adults to read or see explicit sexual materials. While a minority - a very vocal minority - of Americans favors such prohibitions, a majority of the American people presently are of the view that adults should be legally able to read or see explicit sexual materials if they wish to do so.

F. In the absence of a persuasive demonstration of damage flowing from consensual exposure to sexually explicit materials, there seems no justification for adding to the overwhelming tasks already placed upon the law enforcement system. Inconsistent enforcement of prohibitions, which is inevitable, invites discriminatory action based upon considerations not directly relevant to the policy of the law. This breeds public disrespect for the legal process.

G. All attempts to censor "offensive" speech are in conflict with the free speech and press provisions of the First Amendment. The spirit and letter of our Constitution tell us that government should not seek to interfere with the right of free expression unless a clear threat of harm makes that course imperative.

H. Government regulation of what adults read or view should not be retained in order to aid in the protection of young persons from exposure to explicit sexual materials. The "protection" of youth may not justifiably be achieved at the expense of denying adults materials of their choice. It is wholly inappropriate to adjust the level of adult communication to that considered suitable for children.

I. The lawful distribution of explicit sexual materials to adults will not have a deleterious effect upon the individual morality of American citizens or upon the moral climate in America as a whole. Exposure to explicit materials does not cause moral confusion or induce antisocial or criminal behavior. There is no evidence that exposure to explicit sexual materials adversely affects character or moral attitudes regarding sex and sexual conduct. The availability of sexual materials will have no adverse effect upon American values and standards. Such values and standards are currently in a process of complex change in both sexual and non-sexual areas. The open availability of increasingly explicit sexual materials is only one of these changes. The current flux in sexual values is related to a number of powerful influences, among which are the ready availability of effective methods of contraception, changes of the role of women in our society, and the increased education and mobility of our citizens. The availability of explicit sexual materials is not one of the important influences on sexual morality.

J. It is exceedingly unwise for government to attempt to legislate individual moral values and standards independent of behavior, especially by restrictions upon consensual communication.

K. The existence of some moral standards is of vital importance to individuals and to society. To be effective and meaningful, however, these standards must be based upon deep personal commitment flowing from values instilled in the home, in educational and religious training, and through individual resolutions

> of personal confrontations with human experience. Government regulation of moral choice can deprive the individual of the responsibility for personal decisions which is essential to the formation of genuine moral standards. Such regulation would also tend to establish an official moral orthodoxy, contrary to our most fundamental constitutional traditions.

In 1971, the Surgeon General submitted a report from his Scientific Advisory Committee on Television and Social Behavior entitled "Television and Growing Up: The Impact of Televised Violence." The work of this Committee was initiated by a request from Senator John O. Pastore to Health, Education and Welfare Secretary Robert H. Finch in which Senator Pastore said:

> "I am exceedingly troubled by the lack of any definitive information which would help resolve the question of whether there is a causal connection between televised crime and violence and antisocial behavior by individuals, especially children. . . I am respectfully requesting that you direct the Surgeon General to appoint a committee comprised of distinguished men and women from whatever professions and disciplines deemed appropriate to devise techniques and to conduct a study under his supervision using those techniques which will establish scientifically insofar as possible what harmful effects, if any, these programs have on children."

In forwarding his report, The Surgeon General observed that the impact of televised violence on the viewer "is embedded in a complicated set of related variables." Initially, it should be observed that the Surgeon General's Report principally concerned itself with one segment of the television audience, children and youth, and in particular with the effects of televised violence on their tendencies toward aggressive behavior. The Report did not concern itself with many other segments of the population - ethnic minorities, religious groups, the old, the unwell, the poor.

In addressing itself to television's effects on children and youth the Report states:

> "(1) It is sometimes asked if watching violent fare on television can cause a young person to act aggressively. The answer is that, of course, under some circumstances it can. We did not need massive research to know that at least an occasional unstable individual might get sufficiently worked up by some show to act in an impetuous way. The question is faulty, for the real issue is how often it happens, what predispositional conditions have to be there, and what different undesirable, as well as benign, forms the aggressive reaction takes when it occurs.
>
> "(2) It is sometimes asked if the fact that children watch a steady fare of violent material on television many hours a day from early childhood through adolescence causes our society to be more violent. Presumably the answer is, to some degree, 'yes,' but we consider the question misleading. We know that children imitate and learn from everything they see - parents, fellow children, schools, the media; it would be extraordinary, indeed, if they did not imitate and learn from what they see on television. We have some limited data that conform to our presumption. We have noted in the studies at hand a modest association between viewing of violence and

aggression among at least some children, and we have noted some data which are consonant with the interpretation that violence viewing produces the aggression; this evidence is not conclusive, however, and some of the data are also consonant with other interpretations.

"Yet, as we have said, the real issue is once again quantitative: how much contribution to the violence of our society is made by extensive violent television viewing by our youth? The evidence (or more accurately, the difficulty of finding evidence) suggests that the effect is small compared with many other possible causes, such as parental attitudes or knowledge of and experience with the real violence of our society."

Some of the relevant findings of the Report are:

A. Social science today cannot say which aspects of the portrayal of violence make a major difference or in what way. It is entirely possible that some types of extensive portrayals of violence could reduce the propensity to violence in society and that some types might increase it. In our present state of knowledge, we are not able to specify what kinds of violence portrayal will have what net result on society.

B. Violent material is popular. If our society changed in no other way than changing the balance of television offerings, people, to some degree, would still seek out violent material. How much effect a modest quantitative change in television schedules would have is now quite unanswerable.

C. More drastic changes, such as general censorship, would clearly have wide effects, but of many kinds, and some of them distinctly undesirable.

III

It is against this background that this Subcommittee must address the question of whether, and how, government should intrude itself in regulating the "sex" and "violence" on television. From the beginning Congress has enacted legislation preventing the FCC from using its powers to censor broadcast media. "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication." (47 U.S.C. §326.)

The Supreme Court has affirmed a judgment of a three-judge district court refusing to allow the FCC to proscribe "give-away programs" under 18 U.S.C. § 1304 (1970). "The merits of the 'give-away' programs are not an issue in this case. They appear to be a source of amusement for many thousands of people. Even if it could be said that 'we can see nothing of any possible value to society' in these programs, 'they are as much entitled to the protection of free speech as the best of literature' or music. Winters v. People of State of New York, 333 U.S. 507 (1948). When the radio or television audiences tire of them, they will make their exit. But the Commission cannot hurry them off by characterizing certain features of the 'give-away' programs as lotteries, if as a matter of law they are not." American Broadcasting Co. v. United States, 110 F. Supp. 374, 389 (S.D.N.Y. 1953), aff'd, FCC v. American Broadcasting Co., 347 U.S. 284 (1954).

Congress has, however, empowered the FCC to revoke licenses, 47 U.S.C. § 312(A); to issue cease and desist orders, id. § 312(B); and to impose forfeitures for violations of criminal statutes, id. § 503(b)(1)(E). The FCC also possesses enforcement responsibilities with regard to the broadcasting of obscenity. "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000.00 or imprisoned not more than 2 years, or both." 18 U.S.C. § 1464. In June of this year, the FCC proposed tighter laws to bar "obscene and indecent" material from the airways. Under the FCC proposal it would be a crime to broadcast "indecent material". Indecent material, the FCC said, "means a representation or verbal description of a human sexual or excretory organ or function, which under contemporary community standards for radio communication or cable television is patently offensive." Under the FCC proposal, obscene material would include "a patently offensive representation or verbal description of an act of sexual intercourse . . . masturbation; or lewd exhibition of human genital or excretory organs; and taken as a whole appeals to the prurient interest of the average person applying contemporary community standards for radio communication or cable television and, taken as a whole, lacks serious literary, artistic, political, or scientific value."

Even without new legislation, the FCC has claimed the power to regulate expression which is not "obscene" as that term has been defined by the Supreme Court. See Pacifica Foundation v. FCC and U.S.A., No. 75-1391 (D.C. Cir.). In Pacifica, the FCC claimed that it had both the authority and an affirmative obligation to excise offensive but "non-obscene" language from the public airways.

The work involved in the Pacifica case was a record album entitled "George Carlin, Occupation: Foole". The album contained the following allegedly "indecent" words:

"BEGINNING:

> 'I was thinking about the curse words and the swear words, the cuss words and the words that you can't say, that you're not supposed to say all the time . . . I was thinking one night about the words you couldn't say on the public . . . airwaves . . . the ones you definitely couldn't say, ever, . . . so I have to figure out which ones you couldn't and . . . it came down to seven but the list is open to amendment . . . ' "

"ENDING:

> 'And two-way words. Ah, ass is okay providing you're riding into town on a religious feast day. You can't say up your ass . . . There are certain things you can say. It's weird, but you can just come so close.' "

Earlier, in Sonderling Broadcasting Corporation, 27 P.F. Radio Reg. 2d 285, recon. den'd, 41 F.C.C. 2d 777 (1973), the FCC found that a radio station broadcast an "obscenity" in a radio call-in show. The language involved consisted, in part, of the following:

> "Announcer: OK, Jennifer. How do you keep your sex life alive?
>
> "Listener: Well, actually, I think it's pretty important to keep yourself mentally stimulated most of the time and then when you are with that person it's that much better for you.
>
> "Announcer: Uh hum, and how do you do that?
>
> "Listener: Oh, you think about how much fun you're going to be having.

"Announcer: You think about how much fun you are going to be having? That's all it takes?

"Listener: Well, no. (Laughs)

"Announcer: Well what more does it take?

"Listener: Well there - well - if that doesn't work there are different little things you can do.

"Announcer: Like?

"Listener: Well - like oral sex when you're driving is a lot of fun - it takes the monotony out of things.

"Announcer: I can imagine.

"Listener: The only thing is you have to watch out for truck drivers.

"Announcer: Uh hum, ok, that sounds like good advice.

"Listener: Try it sometime you might like it.

"Announcer: Try it - you'll like it! What else my dear?

"Listener: Oh, well - that's about enough for right now."

In support of its conclusion that the talk show was "obscene", the FCC cited the following revealing call from a listener:

"Female Listener: Yes, hello, what I wanted to know about your show was how can you people be so frank about things like this out in the open -- I was always taught to believe that what the husband and wife do is for their bedroom only and between themselves -- Now my daughter happens to be home and she's 13 and she accidentally listened to this show, I mean, don't you think about children that are home from school?

"Announcer: Certainly that's why we don't allow anyone on the air under the age of 18.

"Listener: Well, what about the children who are home from school.

"Announcer: Well I would certainly think that you as a mother would, uh, you know, be keeping an eye on your children.

"Listener: Well, my daughter is right but we accidentally happened to put it on when it had music on and I act. . . .

"Announcer: How long did you keep the show on?

"Listener: Well, I turned it off shortly after but what I want to know is -- I was actually shocked by all this, actually. I mean being frank is one thing but these women seem to have this -- I don't know, I just don't understand this.

"Announcer: You do not talk about sex with anyone?

"Listener: Uh-h not that kind of sex; no I mean . . .

"Announcer: What kind . . . well what kind of sex do you talk about?

"Listener: We just talk about sex and we drop it -- We don't go into detail . . .

"Announcer: Well, what do you mean by detail?

"Listener: Well, this other lady did -- I don't even care to mention it.

"Announcer: Do you think the women have been going into detail today?

"Listener: I do - don't you?

"Announcer: Well what have they been talking about -- they certainly haven't been talking about methods they use.

"Listener: Well - you must have heard what they were talking about - you asked them the questions.

"Announcer: Well certainly I have - but they certainly haven't gone into detail about what type of method they used or anything like that.

"Listener: Where does moral -- where does this -- where does your show like to stop at, I mean, it just goes on and on and - where does it all end?

"Announcer: Well, I think we will have to wait and see on that - won't we?

"Listener: I guess so."

One can sympathize with the mother of the 13-year old girl. Although mother and daughter may read in the family newspaper that high government officials are engaging in sexual hanky-panky, we adults want to "protect" our children from the portrayal of sex in the mass media. It seems to me that much of our concern over the exposure of youth to sexual matters is irrational and merely reflects what we tense and often taboo-ridden adults mistakenly think is harmful for them. Adult feelings on sexual frankness in the media may be based not so much on fear of harm, but on a desire to shield youth from knowledge and thoughts about sex.

Similarly, although our society is concededly highly competitive, aggressive and violent, we want the media to pretend that the world is otherwise. We do not want our adolescents to see the seamy side of life. We do not want them to suffer pain and unhappiness, and if we could, we would prolong the age of innocence indefinitely. Of course, if we should succeed in our efforts to do this, we would at the same time, rob our young people of strength of character and incapacitate them for the crises they are sure to meet.

Mr. Justice Douglas, dissenting in Ginsberg v. New York, 390 U.S. 629, 654-655, suggested that the problem was more a problem for the adult than for youth when he wrote:

> "The 'juvenile delinquents' I have known are mostly over 50 years of age."

Almost 20 years ago, the Supreme Court emphasized the danger of quarantining the adult against works not too rugged for grown men and women in order to shield juvenile innocents. In Butler v. Michigan, 352 U.S. 380, 386, Mr. Justice Frankfurter, speaking for the Court, stated:

> "The incidence of this enactment is to reduce the adult population . . . to reading only what is fit for children. It thereby arbitrarily curtails one of those liberties of the individual, now enshrined in the due process clause of the Fourteenth Amendment, that history has attested as the indispensable conditions for the maintenance and progress of a free society. . . . " (352 U.S. at 383, 384.)

Finally, on this issue, attention should be paid to the statement of D. G. William Jones, an ordained Methodist clergyman, as well as an educator, who, as a member of the Obscenity Commission stated:

> "As a clergyman, and as one who follows a Leader who said, 'I am . . . the Truth,' and 'They shall know the Truth and the Truth shall set them free,' I believe that the search for truth is a liberating, and thus a holy, quest and that science has often proven itself to be God's handmaiden in this quest. Although many religious persons may be distressed by the findings of our research, they must certainly rejoice that misconceptions and prejudices are being replaced by knowledge, and that our concern and efforts may now be redirected toward what appears to be the surer roots of the sexual maladies of our people.
>
> "I have long been concerned that the burden of blame and the therapy of reeducation be focused on the true sources of the sexual crimes and maladjustments which plague our country and its citizens. If certain kind of books or films had been proven the cause, then I was quite willing to join in the crusade against them. However, it has been very adequately shown through our research that the roots of such behavior lie in the home and in the early years of familial and sibling relationships. It is good, I believe, to stop chasing what may have been our unconscious scapegoats in the media and to concentrate these energies instead upon the kind of reeducation of the family which will make for health and sanity."

IV

Twelve years ago, the FCC recognized the First Amendment, statutory, and policy bases for protection of programming from the government censor. In the matter of In re Applications of Pacifica Foundation, FCC 64-43, No. 45386, pp. 3-5, the Commission stated:

> "We recognize that * * * provocative programming * * * may offend some listeners. But this does not mean that those offended have the right, through the Commission's licensing power, to rule such programming off the airwaves. Were this the case, only the wholly inoffensive, the bland, could gain access to the radio microphone or TV camera. No such drastic curtailment can be countenanced under the Constitution, the Communications Act, or the Commission's policy, which has consistently sought to insure 'the maintenance of radio and television as a medium of freedom of speech and freedom of expression for the people of the Nation as a whole' (Editorializing Report, 13 F.C.C. 1246, 1248). In saying this, we do not mean to indicate that those who have complained about the foregoing programs are in the wrong as to the worth of these programs and should listen to them. This is a matter solely for determination by the individual listeners. Our function, we stress, is not to pass on the merits of the program - to commend or to frown. * * *
>
> * * * * * * * * * * *
>
> " * * * [W]e are charged under the Act with 'promoting the larger and more effective use of radio in the public interest' (Section 303(g)0, and obviously, in the discharge of that responsibility, must take every precaution to avoid inhibiting broadcast licensees' efforts

> at experimenting or diversifying their programming. Such diversity of programming has been the goal of many Commission policies (e.g., multiple ownership, development of UHF, the fairness doctrine). Clearly, the Commission must remain faithful to that goal in discharging its functions in the actual area of programming itself."

The intervening twelve years have not been happy ones for those of us who put a high value on free thought and free expression.

In 1975, Chief Judge Bazelon wrote a profound opinion on the dangers of government censorship of radio and television. In voting to grant rehearing en banc in Illinois Citizens Committee for Broadcast v. F.C.C., 515 F.2d 397, 407 (D.C. Cir. 1975)[3/] Judge Bazelon argued that the First Amendment commanded all arms of government to vindicate and protect unpopular speech. "The Amendment is fragile, its commands easily avoided and its defense always difficult. . . ." Judge Bazelon took note of, and rejected, the argument that the great impact of radio and television justifies giving government greater censorship powers over the broadcast media than it would have over other media. This argument, he suggested, is to assume that the First Amendment becomes less applicable as the media's impact becomes more powerful. Judge Bazelon cited with approval the following words of Chief Justice Warren in Times Film Corp. v. City of Chicago, 365 U.S. 43, 77 :

> "The contention may be advanced that the impact of motion pictures is such that a licensing system of prior censorship is permissible. There are several answers

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[3/] This case dealt with the FCC action taken against Sonderling, previously discussed. Because Judge Bazelon's opinion covers so much relevant ground, it is attached as APPENDIX "C".

> to this, the first of which I think is the Constitution itself. Although it is an open question whether the impact of motion pictures is greater or less than that of other media, there is not much doubt that the exposure of television far exceeds that of motion pictures . . . But, even if the impact of the motion picture is greater than that of other media, that fact constitutes no basis for the argument that motion pictures should be subject to greater suppression. This is the traditional argument made in the censor's behalf; this is the argument advanced against newspapers at the time of the invention of the printing press. The argument was ultimately rejected in England, and has been consistently held to be contrary to our Constitution. No compelling reason has been predicated for accepting the contention now."

It is easy to understand and even sympathize with civic and church groups seeking to protect the existing moral standards of the community. But when communication alone is involved, government must remain neutral. If the First Amendment guarantee of freedom of speech and press is to mean anything, it must allow "offensive" communications and even protests against the moral code that the standards of the day set for the community. Government officials do not sit, and should not sit to draw the line between "good" or "bad" radio and television programs. What shocks one person may be sustenance for his neighbor. What causes a person to boil up in rage over a program may reflect only his neuroses, not shared by others.

The First Amendment was designed to invite dispute, to create dissatisfaction with conditions as they are, and even to stir people to anger. Regulating "offensive" programs has the inevitable tendency to subdue the individual and to exalt the power of government, and cuts the very vitals out of the First Amendment.

Justice Douglas, dissenting in Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1971), stated, in acknowledging that people are offended by many works:

> "They are also offended by political pronouncements, sociological themes, and by stories of official misconduct. The list of activities and publications and pronouncements that offend someone is endless. Some of it goes on in private; some of it is inescapably public, as when a government official generates crime, becomes a blatant offender of the moral sensibilities of the people, engages in burglary, or breaches the privacy of the telephone, the conference room, or the home."

Our society - unlike most in the world - presupposes that freedom and liberty are in a frame of reference that make the individual, not the government, the keeper of his tastes, beliefs, and ideas. That is the philosophy of the First Amendment; and it is the article of faith that sets us apart from most nations in the world. The strength of our country depends upon the freedom to think, to question, to seek, to read and portray - and for the other person, to listen, read and view. Only in this way can a society grow from ignorance and irrationality to knowledge and reason, the firmest pillars of public morality. In an ultimate sense, government control of the content of radio and television programs is immoral, because undemocratic.

Respectfully submitted,

FLEISHMAN, BROWN, WESTON & ROHDE

By: Stanley Fleishman
STANLEY FLEISHMAN
General Counsel for ADULT FILM
ASSOCIATION OF AMERICA

A CALL TO THE PEOPLE AND THE CONGRESS OF THE UNITED STATES OF AMERICA

TO

ABOLISH THE UN-AMERICAN OBSCENITY LAWS!

We all know that censorship is dangerous and the eternal enemy of freedom and liberty. Yet, year after year the federal government wastes tens of millions of tax dollars prosecuting publishers, film producers, distributors and exhibitors who merchandise so-called "pornography" to forewarned adults. More persons are prosecuted and jailed in our nation for distributing "objectionable" publications than in any other country in the world. The "obscenity" prosecutions are an exercise in hypocrisy. Government sponsored studies demonstrate that most adults seek sexually explicit materials as a source of entertainment and information, with no harmful effect.

A Presidential Commission on Obscenity and Pornography, after spending two million tax dollars in scientific research, concluded that the obscenity laws, as they apply to willing, forewarned adults should be abolished.

Americans deeply value the right of individuals to determine for themselves what books they wish to read and what pictures and films they wish to see. Our traditions of free speech and free press also value and protect the right of writers and film-makers to serve the diverse interests of the American public

We have had enough censorship by "Big Brother." We urge the new Congress to examine the report of the Presidents Commission on Obscenity and Pornography and implement the wise recommendations of that commission to abolish obscenity laws as applied to forewarned, willing adults.

For further information, write the Adult Film Association of America, 1654 Cordova Street, Los Angeles, California 90007.

ADULT FILM ASSOCIATION OF AMERICA

A non-profit membership corporation of
motion-picture producers, distributors
and exhibitors.
David F. Friedman
National President

APPENDIX "A"

"We are not against censorship because we realize there is always the danger of something being said."—Tom Smothers

Smothering the Smothers Brothers

by Stanley Fleishman

Mason Williams, one of the original writers for the Smothers Brothers Comedy Hour, wrote a poem in which he discusses, as a poet, most of the issues involved in CBS' firing of Tom and Dick Smothers.

"THE CENSOR"

The Censor sits
Somewhere between
The scenes to be seen
And the television sets
With his scissors purpose poised
Watching the human stuff
That will sizzle through
The magic wires
And light up
Like welding shops
The ho-hum rooms of America
And with a kindergarten
Arts and crafts concept
Of moral responsibility
Snips out
The rough talk
The unpopular opinion
Or anything with teeth
And renders
A pattern of ideas
Full of holes
A doily
For your mind.

Now that the dust is settled, it is crystal clear that CBS cut the Smothers Brothers loose because the network disapproved of the sharp social satire the Smothers Brothers successfully brought into their entertainment program. As Time magazine (4-18-69) saw it: "For both the Smothers Brothers and CBS, the deeper issue is whether comedians have the right to make impertinent statements without network interference. Tommy and Dickie maintain that every self-respecting wit must lace his humor with social comment." The question really is not whether the artist has the right to talk honestly, without network interference, but rather whether the network has total, arbitrary, unfettered power "to snip out the rough talk, the unpopular opinion, or anything with teeth." For example, Robert Wood, President of CBS-TV Network, said that the

Tommy and Dick Smothers (left and right, above). Below, Tommy at a "Bed-In" with John and Yoko Lennon.

APPENDIX "B"

Smothers Brothers were fired because they produced a show that "would not be acceptable under CBS' standards because, at the very least, it contains a monologue which in our opinion would be considered to be irreverent and offensive by a large segment of our audience and, therefore, unacceptable even if this were not the week of the Eisenhower rites and even if Sunday were not Easter Sunday."

The monologue referred to was performed by David Steinberg. Steinberg had made an earlier appearance on The Smothers Brothers Comedy Hour and, according to CBS, drew 210 unfavorable comments. Among the unfavorable comments were: "We, the people of the Christian religion, resent the sacrilege on their show." "I have a sense of humor but all these jabs at religion are hard to stomach." "Shocked, horrified, and ashamed with the scene making fun of the 'Creator,' un-American and sacrilegious." If we assume that 20,000,000 people saw this Smothers Brothers show, then presumably 19,999,790 people saw the show without too much trauma.

The second Steinberg sermonette, the one which CBS protected the American public from seeing, was found "acceptable" by the critics, who saw it over Canadian television. Time magazine (9-18-69) again noted: "The sermonette that CBS felt would have been considered 'irreverent and offensive by a large segment of our audience' turned out to be rather mild, even in an Easter week following the Eisenhower funeral. Comedian David Steinberg's retelling of the story of Jonah was more in the vein of Mark Twain than Lenny Bruce. Jonah, in Steinberg's version, was swallowed by a giant guppy. Many clergymen appreciate Steinberg's mischievous biblical homilies and he has often been invited to speak in churches and temples."

Murray Chercover, President of the Canadian station which aired the controversial show, said he had previewed the show at the request of a subordinate before permitting it to be aired in Canada. "I wasn't concerned about satirizing religion as long as it was tasteful," said Mr. Chercover. "I'm satisfied this one is tasteful."

Jack Gould, the New York Times television columnist, said: "The program chanced to be one of the best that the Smothers Brothers have offered all season, imaginatively topical and genuinely amusing, and the 'sermonette' challenged by the network was not worth all the managerial jitters."

Throughout the dispute, CBS argued that an entertainment program is not a proper forum for social comment and supported its claim by reference to the TV Code of the National Association of Broadcasters. Most of the standards set forth in the Code were put there in 1952, when the first Code was enacted. A good deal of the language was derived from the old Motion Picture Production Code and the standards set up by the National Catholic League of Decency. While both of these groups have considerably modified their criteria in an attempt to keep abreast of changing times, the Television Code has remained intact, with one major modification. In the early '60's, a new standard was added which reads, in part:

"It is in the interest of television as a vital medium to encourage and promote the broadcast of programs presenting genuine artistic or literary material, valid moral and social isues, significant controversial and challenging concepts and other subject matter involving adult themes. Accordingly, none of the provisions of this Code, including those relating to the responsibility toward children, should be construed to prevent or impede their broadcast. . . ."

Since the adoption of this standard, broadcasters have relied upon it when they chose to broadcast "controversial and challenging concepts and other subject matter involving adult themes," and have ignored it when they chose not to broadcast such material.

Over the last three seasons, the Smothers Brothers aimed their comedy at the 25-and-under-group. The consistently high ratings indicate that they also reached many of the older groups. They have proceeded happily and innocently on the basis that this is still a free country and have continued to guard against the most effective form of suppression: self-censorship. Over enormous obstacles imposed by CBS, the Brothers have consistently poked fun at most of our sacred cows. The pious politician, the phony religious leader, the immoral Vietnam war, the ultrapatriot, the lying adult and the hypocrite all felt the Brothers' sharp needle. The cast of the show even recited the pledge of allegiance and carefully omitted the words "under God." Why did they do this, one anguished newspaper editorial asked, "if not to downgrade religion and patriotism?"

The Brothers also fought to bring to the American public controversial personalities, but not always with success. Dr. Spock, who was convicted of "conspiring" to oppose the draft, was banned by CBS. On the other hand, the Brothers succeeded in airing Pete Seeger, Joan Baez, Jackie Mason and David Steinberg. Pete Seeger's appearance on the Comedy Hour was his first network show in 17 years. He had been blacklisted from broadcasting during the McCarthy Era because of his political views. When he first appeared, CBS cut out his song "Waist Deep in the Big Muddy," the controversial last stanza of which goes:

Now every time I read the papers,
That old feelin' comes on;
We're waist deep in the Big Muddy
And the big fool says to push on.

Apparently CBS felt that the song was disrespectful to President Johnson. Curiously, the second time Pete Seeger appeared on the show the network withdrew its objection to the song. When Joan Baez appeared, the network cut that portion of her introduction where she dedicates her song to her husband who was convicted of draft resistance.

CBS continuously refers euphemistically to the network's "responsibility to the public with respect to the questions of taste," without explaining why satirizing of established institutions and commenting on valid moral and social issues become the subject of "taste" considerations. That's the nub of it. CBS does not believe that an entertainment program is a proper forum for social comment. Federal Communications Commissioner Nicholas Johnson, commenting on this statement, asked:

"What does this mean, 'not a proper forum for social comment'? Hasn't 'social comment' been part of entertainment since the beginning of time? Wasn't it the stuff of which the troubadours' songs were made? Hasn't it the raw material of a Will Rogers or an Art Buchwald? Of course. Aren't we therefore left with the conclusion that the only kind of 'social comment' that's unfiit for television is that which involves, in Mason Williams' phrase, 'the unpoplar opinion/ or anything with teeth'? For Bob Hope's commentary about the Vietnam War seems fully acceptable to the networks and so do other entertainers' critical observations about protesting college students, or gun control legislation. It is not the subject, it's what you say about it. And it's not how unpopular your views may be — it's *who* finds them unpopular."

A long time ago, Robert Burns said that he did not care who made the laws for the country, provided he could sing its songs. This recognition of the importance of social commentary through entertainment was acknowledged by the United States Supreme Court 21 years ago. In holding that an assortment of magazines were entitled to First Amendment protection, the Court said (**Winters v. New York** [1948]):

". . . We do not accede to the suggestion that the constitutional protection for a free press applies only to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine."

And just this year Justice Thurgood Marshall observed that the free speech and press guarantees are not confined to the expression of ideas that are conventional or shared by a majority. Nor is it relevant, he said, that the material in question is "arguably devoid of any ideological content. The line between the transmission of ideas and mere entertainment is much too elusive for this Court to draw, if indeed such a line can be drawn at all."

There are many, however, who insist that "censorship" is not the issue. **TV Guide** (4-10-69), for example, said:

"Freedom of speech is not the issue. . . . The issue is: shall entertainers using a mass medium for all the people be allowed to amuse a few by satirizing religion while offending the substantial majority? The issue is: shall a network be required to provide for a Joan Baez to pay tribute to her draft-evading husband while hundreds of thousands of viewers in the households of men fighting and dying in Vietnam shall look on in shocked resentment?"

Unlike **TV-Guide**, Commissioner Johnson of the FCC found the firing of the Smothers Brothers a very serious censorship problem. After observing that there was a tight interlocking between broadcasting and defense industry spending, which may explain why broadcasters generally support the Anti-Ballistic Missiles Program, he went on to say:

"CBS's Smothers Brothers had a little comment on the ABM last evening, innocuous enough. That was the last show, seemingly forever, as well as for the season. It would be preposterous to suggest that the program is being cancelled because they said something about the ABM, but it is not so preposterous to suggest that the series may be cancelled because of what they have had to say about some other social issues in our country. They had something to say at the end of last evening's show about the censorship that has been exercised over them by CBS, a company whose President prides himself as a defender of the First Amendment. The Smothers Brothers pointed out that some 75 percent of their shows had been substantially altered or doctored. . . ."

Commissioner Johnson wondered how we looked to the rest of the world when a nation like Canada broadcasts a show that CBS finds too dangerous for those of us who live in the land of the free and the home of the brave. "But then," he said, "it was Canada that carried the reports of American troops' involvement in chemical-biological warfare on Canadian television news programs at a time when that information was kept from the American people by the American television networks also. So, as the Smothers Brothers suggested last night, perhaps CBS's next effort will be to cancel the whole country of Canada. Until that happens it is one source of information."

It has been suggested that the Smothers Brothers were victims of the fear generated by the outcry over "filth and violence on television." The **Saturday Review** (4-5-69) commented: "The atmosphere is filled with fear these days; Congressional committees are once again at the traditional ritual of periodic outcry over 'filth and violence on television.' The Senators resonate and the tremors are passed down in memos from network presidents to subordinates. Hence the harassment of the Smothers Brothers who first broke out of the bag of variety mediocrity."

The firing of the Brothers by CBS followed by short weeks the recent convention of the National Association of Broadcasters, which Variety (3-26-69) asserted laid the groundwork for the "dark age of Code Office censorship" not unlike "the Czarist years of Will Hays in the motion picture industry." In that convention, according to Variety, the broadcasters sought to make a deal with Senator Pastore to give up controversial broadcasting and broadcasting dealing with sex and violence, in exchange for a perpetual monopoly. This was made evident in Senator Pastore's speech to the convention in which he said he thought it was unfair to require a broadcaster's license to be reviewed every three years. If the broadcasters behaved, he suggested, he would introduce legislation making their licenses secure and virtually perpetual. Commenting on the "great burst of applause for Pastore" when he made this statement, Variety went on to say: "The industry's decision to accept censorship in exchange for security has been apparent at practically every management event."

The economic stakes are high. William S. Paley, Chairman of the Board of Columbia Broadcasting System, announced at its last stockholders' meeting that CBS' net sales for the first quarter were an estimated $259,000,000. If the quarter were projected for an entire year, CBS' yearly sales would amount to the staggering sum of $1,036,000,000. This, of course, is a lot of money to protect. To protect it, broadcasters both individually and in concert have traditionally avoided controversial programming because sponsors are hesitant to become even subliminally associated with opinions disagreeable to potential purchasers.

The lone governmental voice crying out against censorship resulting from economic pressure is that of Commissioner Johnson. Testifying before the House Banking and Currency Committee (4-21-69), he said that it was a mistake to think of censorship today in terms of government. The real repressive forces that keep exciting television from the American people come from the broadcasters themselves. He observed that many of the most politically powerful and economically rewarding stations are owned by huge corporations, many of which are larger than most state governments in this country. This ownership by big business is a threat to our free society, Johnson argues, since it often results in broadcasting for profit rather than in the public interest.

The same point was made by Fred W. Friendly, who, like the Smothers Brothers, was forced out of CBS because he, too, sought to make television broadcasting relevant and controversial. "I am enough of a journalist to know," he said, "that the broadcaster who wraps himself in the First Amendment while clutching his franchise to his bosom is asking to have his Constitution two ways. The applicable part of the First Amendment says that 'Congress shall make no law . . . abridging the freedom of speech, or of the press.' But the instant that a station wins a license to occupy a frequency to the exclusion of all other applicants . . . the First Amendment is limiting the rights of every other citizen. . . . But it would be cynical for anyone in the business end of broadcasting to use the First Amendment as a shield. The Bill of Rights still flies high; it just doesn't happen to have much to do with the profits of a government-granted monopoly."

In this day and age, it is rare indeed for a performer to risk money and fame to achieve his artistic goals. One only has to remember the

$1,036,000,000 in CBS' yearly sales to know that the artist, not the network, generally loses the struggle in such a confrontation. Time magazine quotes Tom Smothers as saying: "What I'm afraid of most is that this whole thing will dry up and go away and be forgotten."

That *would* be an American tragedy. ◘

30.

Statement of BAZELON, Chief Judge, as to why he voted to grant rehearing *en banc:*

Part I of the Court's opinion tells a portion of the story that led to this litigation, but omits the denouement and that I think accounts for its legal errors. The beginning point for understanding this case is to put to one side for the moment the formal legal proceedings against the Sonderling Broadcasting Company. The heart of the case lies in the realities of the relationship between the Federal Communications Commission and radio licensees. One first notes a pervasive regulatory scheme in which the licensees are dependent on the FCC and the government for their economic well-being. The main threat is, of course, that the government can put a licensee out of business but I suppose that the more pervasive threat lies in the *sub rosa* bureaucratic hassling which the Commission can impose on the licensee, *i. e.* responding to FCC inquiries, forcing expensive consultation with counsel, immense record-keeping and the various attendant inconveniences. Next in rank in potential threats lies government refusal to grant economic and other related benefits which the licensees seek through the legislative or administrative process, such as the recent license renewal bill and the grant of renewal by the Commission without a hearing. For better or worse, a licensee confronted with the choice between an economic disadvantage and pleasing the government through curtailment of a constitutional right will generally choose curtailment. Thus, licensee political or artistic expression is particularly vulnerable to the "raised eyebrow" of the FCC; faced with the threat of economic injury, the licensee will choose in many cases to avoid controversial speech in order to forestall that injury. Examples of this process are legion.[1]

Robinson, The FCC and the First Amendment, 52 Minn.L.Rev. 67, 115, 123–24 (1967); Cohn, How Liberals Rediscovered Free Speech, The Washington Post, Dec. 22, 1974, § B, at 3, col. 1 (discussing former

This case presents another example. It is indeed a classic example illustrating a whole range of "raised eyebrow" tactics. Various radio licensees, led by the Storer Broadcasting Company (Station KGBS–AM in Los Angeles and syndicated with 21 other stations), and including Metromedia Broadcasting Company (Station KNEW in Oakland) and Sonderling (Station WGLD–FM in Oak Park, Illinois), expanded their traditional telephone talk shows which appeal largely to housewives to include on various days explicit discussion of sexual relations. These show were apparently extremely popular but generated a number of viewer complaints which came to the FCC directly or through members of Congress. These shows had been on the air for some time when in the spring of 1973 the FCC finally decided to censor them. It did so in the following manner: on March 27, 1973 the Commission opened a *closed* notice of inquiry[2] into allegations of obscene or indecent material being broadcast by licensees. This inquiry coincided with the national convention of the National Association of Broadcasters (NAB). On the same day as this notice the Board of Directors of the NAB passed a resolution which condemned "tasteless and vulgar program content, whether explicit or by sexually-oriented innuendo."[3] The very next day then FCC Chairman Dean Burch gave the annual chairman's speech to the NAB convention in which he attacked with the strongest language the "prurient trash that is the stock-in-trade of the sex-oriented radio talk show, complete with the suggestive, coaxing, pear-shaped tones of the smut-hustling host."[4]

The Chairman then stated:[5]

> And the price [of ignoring this "problem"] may be high. Because this comes at a time when broadcasters are seeking greater stability in the renewal process, longer license terms, selective de-regulation, and less detailed intrusion into journalistic discretion. . . .
>
> All these matters are now pending before the Congress or the Commission. All are dependent on the notion of the responsible public trustee. . . .
>
> The Commission has now acted [by releasing the notice of inquiry] and will take further action in this difficult field as necessary. It is my hope and the purpose of this statement to make further government action moot.

Chairman Burch's phone call to the president of CBS news requesting a transcript of network news analysis of a Nixon speech and an address by Clay Whitehead, former director of the Office of Telecommunications Policy): Report on the Broadcast of Violent, Indecent and Obscene Material, 32 P & F Radio Reg.2d 1367, 1370–74 (1973) (discusses efforts of Chairman Richard Wiley to restrict viewing of "adult" programming to time periods afer 9 o'clock at night). *See also* Memorandum from Charles Colson to H. R. Haldeman, Sept. 25, 1970 (discussing a meeting between Colson and various television network officials), reprinted in Senate Select Comm. on Presidential Campaign Activities, Final Report, S.Rep.No.981, 93d Cong., 2d Sess. 281–83 (1974).

[2] Alleged Broadcasts and Cablecasts of Obscene, Indecent or Profane Material, No. 73-331 (FCC March 27, 1973). This inquiry was conducted pursuant to 47 U.S.C. § 403 (1970) and by it the Chief Administrative Law Judge of the FCC was given broad subpoena powers and could, of course, take the testimony of witnesses. 47 U.S.C. § 409(e) (1970). The notice provided that the proceeding was closed to the public and hence all actions, to the extent there were to be any actions, were to be conducted in private. Ironically, the FCC later argued that the inquiry was closed in order to *prevent* any chilling effect, *see* Sonderling Broadcasting Corp., 41 F.C.C.2d 777, 783 n. 17 (1973), but it seems clear enough that the closed nature of the inquiry both accentuated the chilling effect and, indeed, should have been foreseen as having that effect. *See* Letter to FCC from Egmont Sonderling, at 3, Joint App. at 18.

[3] *See* Letter from Vincent Wasilewski, President, NAB, to Dean Burch, Chairman of the FCC, March 27, 1973, in Joint App. at 13.

[4] Address by Dean Burch, Chairman of the FCC, Before the NAB, in Joint App. at 8.

[5] *Id.* at 10, 11, 9.

The timing of these events is made all the more interesting by the fact that the Commission had, when the notice of inquiry was issued and Burch made his speech, already ordered its Field Engineering Bureau in January and February to tape the talk shows and the Commission staff had taken the 61 hours of tape produced by the Bureau and reduced it to a 22 minute tape of the "dirtiest" talk. The Bureau had taped eight stations subject to the most viewer complaints. Then on March 21, 1973, six days before the issuance of the closed notice of inquiry, the Commission heard this 22 minute tape and ordered the staff to prepare a "notice of apparent liability" against Sonderling.[6] The next day, March 22, the Commission adopted the closed notice of inquiry which was not issued until March 27.

The broadcaster response to these events indicates the true nature of the relationship between the licensees and the Commission and fully justified Chairman Burch's "hope" that his statement would make the controversy moot. Storer Broadcasting ended all sexual discussion on its widely syndicated talk show originating in Los Angeles on March 29, one day after Burch's speech. The Executive Vice-President of Storer stated this action was due to the Chairman's speech and the notice of inquiry and added: [7]

> [R]ather than add to the problems of an industry which already has enough major difficulties in the area of governmental relations, we prefer to be responsive.

The General Manager of station WHN of New York stated:[8]

> We didn't feel it was a big enough part of our format to be worth the hassel, or worth looking over our shoulder and wondering what Big Brother thought of our topic yesterday.

Several other stations including Station WDEE of Detroit followed suit and by June of 1973, a NAB survey found almost a total absence of sex discussion on the radio. One anonymous broadcaster stated: [9]

> You have to understand, . . . [we] are a member of a group that operates a number of stations and are going to cable TV, and our growth depends on F.C.C. approval. We live or die still by the F.C.C. gun.

This is, of course, the denouement I mentioned earlier. But more was in store for Sonderling. Sonderling had been aware, like, I assume, other licensees, that something was in the air about the talk shows. On March 6, the station instituted a careful record keeping program of complaints and of topics on the show and limited discussion of sex to twice a week, obviously in anticipation of FCC action. After the notice of inquiry and Burch's speech, Sonderling on March 29 banned all sexual discussion from its talk shows.[10] On April 11, Sonderling communicated this fact to the FCC after reading reports in Broadcasting Magazine that the Commission intended to impose a sanction on it.[11] It was unfortunately too late since the Commission staff had already finished its Notice of Apparent Liability and sent it to Sonderling, also on April 11.[12]

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[6] *See* Sonderling Broadcasting Corp., 41 F.C.C.2d 777, 778–79 (1973).

[7] *See* Broadcasting Mag., Apr. 2, 1973, at 27–28 for a discussion of the Storer actions. *See also* Mark, FCC looks at sex talk, and radio gets careful, Chicago Sun-Times, March 30, 1973, at 51 col. 1.

[8] Sexually Explicit Radio Shows Wilt Under Criticism by FCC, N.Y. Times, Apr. 24, 1973, at 1, 72. *See also* Gartner, Putting a Censorship Lid on Topless Radio, Wall St. J., May 15, 1973, at 24.

[9] *Id.* on the NAB, survey, *see* Sex Talk is Muted on Radio-Code Stations, Broadcasting Mag., June 4, 1973, at 55.

[10] Letter of April 11 from Egmont Sonderling, at 3, Joint App. at 18.

[11] *Id.*

[12] *See* Sonderling Broadcasting Corp., 27 P & F Radio Reg.2d 285 (1973). Then Commis-

This Notice informed Sonderling that it could either pay ("forfeit") $2000 to the government now or contest the Notice before the FCC or in court. Sonderling responded on May 3, stating that it had ended the offending shows on March 29, that it had never broadcast anything which was significantly different from that broadcast by Storer or Metromedia, that it had not received the Commission's letter until April 16, although the press had been given a copy on the 11th,[13] that it believed the Commission had censored it in violation of the First Amendment and had denied it important procedural rights but concluded:[14]

> Despite our rather strong feelings that the Commission is wrong both on the facts and on the law, Sonderling . . . feels, regrettably, that it cannot sustain the tremendous financial burden involved in testing the broad constitutional issue presented herein. In other words, it is forced, by the very nature of the Commission's processes, to pay the $2000 rather than spend many times that sum in litigating the Commission's constitutional authority. . . .

On May 11, 1973 the Illinois Citizens Committee for Broadcasting and a Division of the American Civil Liberties Union filed before the FCC an application for remission of the Sonderling "forfeiture" and to reconsider the closed notice of inquiry. The Commission not having acted on this application, the Citizens Committee on June 8 sought review in this Court. On July 6, the Commission denied the relief sought by the Committee. Over one year and four months later, this Court affirmed this July 6 Commission action. After the Committee suggested rehearing *en banc*, I called for a vote. My vote was the only vote cast in favor of rehearing *en banc*.

In my opinion the Court has made four groups of errors which are of more than sufficient importance to justify rehearing *en banc*. In order to clarify just what the Court has done in this landmark case, I will discuss these four groups of errors below. I consider this discussion particularly appropriate in light of the significant reliance placed on the Court's opinion in the FCC's recent report on the Broadcast of Violent, Indecent and Obscene Material, 32 P & F Radio Reg.2d 1367 (1975) and in an accompanying decision, Pacific Foundation, 32 P & F Radio Reg.2d 1331 (1975) (FCC Feb. 19, 1975). First, I will discuss the standing of the Citizens Committee. Second, I will explore the procedural deficiencies of the Commission's actions. Third, I will suggest that the Court improperly affirmed the Commission's substantive decision on the basis of a legal test of obscenity formulated after the Commission's decision. Fourth, I will argue that the history of the case discussed previously, demonstrates that the Commission has engaged in the most flagrant and illegal censorship and has thereby greatly prejudiced the First Amendment rights of numerous licensees. Although I discuss this point fourth, for organization reasons, the history of the case must be kept constantly in mind in order to confront the other legal issues the case presents.

I. *Standing*

The Court finds standing on the part of the petitioner Illinois Citizens Committee for Broadcasting to challenge the Commission's substantive determination that the Sonderling talk show was obscene but no standing to challenge the procedural deficiencies in the Commission's approach to that finding.[15] The

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sioner Johnson dissented. Many of the points made in that dissent are reflected in this Statement.

[13] After some bureaucratic run-arounds, Sonderling's Washington counsel was able to obtain a copy of the letter on April 13. Sonderling officially received the letter on the 16th. Letter to Ben Waple, Secretary of the FCC, from Egmont Sonderling, May 3, 1973, Joint App. at 56–61.

[14] *Id.* at Joint App. 61.

[15] Slip op. at 402, 403 *citing* Smuck v. Hobson, 132 U.S.App.D.C. 372, 408 F.2d 175

Court's holding on this point is far from lucid. It first states that the procedural errors may not be asserted by the public but only the licensee. It then makes the following ineluctable statement:[16]

> We have no need to consider whether the public is entitled to intervene on a petition for reconsideration after the initial determination [presumably of obscenity] has been made when the licensee declines to press the matter further. *Cf.* [to cases holding that an intervenor in a judicial proceeding after judgment may be entitled to intervention as of right and hence the right to appeal if a party in the proceeding who previously represented the interests of the intervenor decides not to appeal]. In this case a representative of the public did in fact ask the Commission to reconsider its determination, and the Commission responded in some detail to the concerns expressed. Finding no prejudice from the procedure, we turn to the merits.

Does the Court by this contend that Sonderling was not prejudiced from the FCC procedure? How can the Court "have no need to consider" whether the public may intervene after judgment when the licensee fails to assert its rights? This is the Committee's contention and they assert it in order to challenge procedures Sonderling refused to challenge. The fact that the Commission reconsidered its determination in no way changes the fact that certain procedures were used to fine Sonderling. The fact of reconsideration thus cannot affect or eliminate any prejudice suffered by Sonderling. The procedural deficiencies alleged are completely separate from the extent of the Commission's consideration of the Committee's claims. The question to be faced is whether the Committee stands in the shoes of Sonderling in asserting constitutional claims against the Commission's action. To this question, we have only the *ipse dixit* answer that the public has no right in the procedures followed by the FCC in obscenity cases.

To understand the nature of the Court's error, we need to consider the nature of the rights of the listening audience in FCC proceedings. The leading case of Office of Communication of the United Church of Christ v. FCC, 123 U.S.App.D.C. 328, 359 F.2d 994, 1000–06 (1966), not cited in the Court's opinion, holds that responsible members of the listening audience have standing to present evidence to the FCC on the programming practices of a licensee. While that case is distinguishable here, since we confront not a challenge to licensee action but a challenge to FCC action, no persuasive reason has been suggested why the reasoning of *United Church of Christ* should not be extended to the situation *sub judice*. That case recognized that listeners are a prime intended beneficiary of the Federal Communications Act;[17] Supreme Court cases not directly concerning standing have often stated that listeners, both under the Federal Communications Act and the First Amendment, have an interest in

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(1969); Nuesse v. Camp, 128 U.S.App.D.C. 172, 385 F.2d 694, 704 n. 10 (1967); Wolpe v. Poretsky, 79 U.S.App.D.C. 141, 144 F.2d 505, cert. denied, 323 U.S. 777, 65 S.Ct. 190, 89 L.Ed. 621 (1944).

[16] Slip op. at 403.

[17] 359 F.2d at 1003, *citing* Federal Communications Comm'n, Network Program Procurement, H.R.Rep.No.281, 88th Cong., 1st Sess. 20 (1963).

The legality of listener standing is so well accepted that the point is never raised in present FCC litigation. A survey of recent cases in this circuit demonstrates, however, that listeners have been implicitly granted standing to challenge just about every form of FCC program regulation or of licensee programming activity. *See* National Broadcasting Co. v. FCC, 170 U.S.App.D.C. —, 516 F.2d 1101 (D.C.Cir. 1974) (intervenors Accuracy in Media, Inc.; United Church of Christ); Citizens Comm. to Save WEFM v. FCC, 165 U.S.App.D.C. —, 506 F.2d 246 (1974); Columbus Broadcasting Coalition v. FCC, 164 U.S.App.D.C. —, 505 F.2d 320 (1974); Stone v. FCC, 151 U.S.App.D.C. 145, 466 F.2d 316 (1972); Citizens Communications Center v. FCC, 145 U.S.App.D.C. 32, 447 F.2d 1201 (1971); Hale v. FCC, 138 U.S.App.D.C. 125, 425 F.2d 556 (1970).

programming.[18] Thus, in the terms of the conventional standing analysis,[19] listeners have interests which are within the "zone of interests" of the relevant statute and they, therefore, have standing if they allege an injury in fact to those interests. The interest, as noted in *United Church of Christ*, lies in the receipt of desired programming. There is no question that the Committee has alleged an injury in fact to that interest.

The Court by implication excludes from protected listener interests an interest in the procedures whereby programming is determined to be obscene or indecent. There is no basis for this exclusion. The purpose of procedural safeguards is to prevent a "chilling effect" on persons not directly brought into the relevant proceedings.[20] If this chilling effect were to occur, as it did in this case, then programming or speech is eliminated and the listener's interest in the receipt of programming which is protected by the First Amendment is injured. The listeners therefore have standing to challenge the procedural inadequacies.

Even if all this were wrong, and I perceive no way it could be, I think standing could be given to the listeners on *jus tertii* grounds.[21] The Supreme

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[18] *See* Columbia Broadcasting System, Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 112-13, 93 S.Ct. 2080, 36 L.Ed.2d 772 (1973); Kleindienst v. Mandel, 408 U.S. 753, 762-63, 92 S.Ct. 2576, 33 L.Ed.2d 683 (1972); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969); A Quantity of Books v. Kansas, 378 U.S. 205, 213, 84 S.Ct. 1723, 12 L.Ed.2d 809 (1964).

[19] Association of Data Processing Serv. Org. v. Camp, 397 U.S. 150, 152-53, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970); Potomac Passengers Ass'n v. Chesapeake & O. Ry. Co., 154 U.S.App.D.C. 214, 475 F.2d 325, 329-30 (1973), rev'd on other grounds sub nom. National R.R. Passengers Corp. v. National Ass'n of R.R. Passengers, 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed. 646 (1974). This Circuit has been a leader in the development of concepts of standing such as the one explicated in the text. *See* Constructores Civiles de Centroamerica, S.A. v. Hannah, 148 U.S.App.D.C. 159, 459 F.2d 1183, 1186 (1972); M. Steinthal & Co. v. Seamans, 147 U.S.App.D.C. 221, 455 F.2d 1289 (1971); National Automatic Laundry & Cleaning Council v. Shultz, 143 U.S.App.D.C. 274, 443 F.2d 689 (1971); P.A.M. News Corp. v. Hardin, 142 U.S.App.D.C. 227, 440 F.2d 255, 257 (1971); Blackhawk Heating & Plumbing Co. v. Driver, 140 U.S.App.D.C. 31, 433 F.2d 1137, 1139-40 (1970); Ballerina Pen Co. v. Kunzig, 140 U.S.App.D.C. 98, 433 F.2d 1204 (1970), cert. denied, 401 U.S. 950, 91 S.Ct. 1186, 28 L.Ed. 234 (1971); National Welfare Rights Org. v. Finch, 139 U.S.App.D.C. 46, 429 F.2d 725, 732-35 (1970); Peoples v. Department of Agriculture, 138 U.S.App.D.C. 291, 427 F.2d 561, 563-64 (1970); Scanwell Laboratories, Inc. v. Shaffer, 137 U.S.App.D.C. 371, 424 F.2d 859, 870-71 (1970); National Ass'n of Securities Dealers v. SEC, 136 U.S.App.D.C. 241, 420 F.2d 83, 98-100 (1969), aff'd on other grounds sub nom. Investment Co. Instit. v. Camp, 401 U.S. 617, 91 S.Ct. 1091, 28 L.Ed. 367 (1971) (Bazelon, C. J. concurring); Marine Space Enclosures, Inc. v. FMC, 137 U.S.App.D.C. 9, 420 F.2d 577, 590-92 (1969); Air Reduction Co. v. Hickel, 137 U.S.App.D.C. 24, 420 F.2d 592, 594 (1969); Curran v. Laird, 136 U.S.App.D.C. 280, 420 F.2d 122, 126-27 (1969) (en banc). These liberal principles of standing before administrative agencies were applied in FCC cases involving allegations of economic injury. *See* Philco Corp. v. FCC, 103 U.S.App.D.C. 278, 257 F.2d 656, 658-59 (1958), cert. denied, 358 U.S. 946, 79 S.Ct. 350, 3 L.Ed.2d 352 (1959); Granik v. FCC, 98 U.S.App.D.C. 247, 234 F.2d 682 (1956); Metropolitan Television Co. v. United States, 95 U.S.App.D.C. 326, 221 F.2d 879 (1955). *See generally* Albert, Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief, 83 Yale L.J. 425, 473-97 (1974). The Court's opinion is not consistent with these cases.

[20] *See* Blount v. Rizzi, 400 U.S. 410, 416, 91 S.Ct. 423, 27 L.Ed.2d 498 (1971) *quoting* Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 66, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963); A Quantity of Books v. Kansas, 378 U.S. 205, 213, 84 S.Ct. 1723, 12 L.Ed.2d 809 (1964); Marcus v. Search Warrant, 367 U.S. 717, 736, 81 S.Ct. 1708, 6 L.Ed.2d 1127 (1961).

[21] I use the term "*jus tertii*" to refer to so-called derivative standing. *See* Albert, *supra* note 19, at 465-68; Note, Standing to Assert Constitutional Jus Tertii, 88 Harv. L.Rev. 423, 423-36 (1974) discussing the extremely relevant case of Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

Court has often permitted persons to challenge a statute or decision even though they are not directly injured in a legally protected interest if those persons have a protected relationship with another group of persons who are directly injured in a legally protectable interest if the second group of persons is unlikely to assert their rights because the economic injury to that group is not sufficient to support the cost of litigation.[22] Here we have an explicit statement by Sonderling that the reason it did not pursue its case was the fact that the economic cost was too high in consideration of the stakes of the litigation ($2,000). The relationship between the licensee and the listening public is protected under the *Christ Church* standing rationale and under the First Amendment.[23] *Jus tertii* standing is thus appropriate.

Furthermore, since the Court appears to accept that the petitioner Committee does have the right to be in the proceeding to challenge the substantive decision of obscenity, it must follow that they may raise all constitutional or statutory claims regardless of whether they would have standing to raise those claims alone.[24] Thus, there is no way the Court can grant standing on the substantive issue and deny it on the procedural issue. The fact that standing is sought in a petition for reconsideration or to set aside a forfeiture is no cause for a conclusion different than that expressed above. A Notice of Apparent Liability is procedurally meant (although it was not used in this manner against Sonderling) as only a charge of obscenity and not a final judgment. Thus none of the policies against permitting intervention after final judgment are applicable.[25] In any event, the withdrawal of Sonderling from prosecution of the case against the FCC materially altered the situation in regard to protection of the Committee's interest and under the very authorities cited by the Court, the Committee would have grounds for intervention. Considering the fast pace of events, we could hardly charge the Committee with a lack of diligence in protecting its rights.

The Court is plainly in error in denying the Committee standing to challenge the procedural deficiencies in the FCC's censorship of Sonderling and other broadcasters. This error marks a distinct conflict between the holding here and the entire train of standing decisions in this Court[26] and, indeed, in the

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[22] *See* Eisenstadt v. Baird, 405 U.S. 438, 445–46, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 65–66 n. 6, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963); Griswold v. Connecticut, 381 U.S. 479, 481, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 459, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958); Albert, *supra* note 19, at 466–73; Note, *supra* note 21, at 425. *See also* Roe v. Wade, 410 U.S. 113, 120–21, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); Curran v. Laird, 136 U.S.App.D.C. 280, 420 F.2d 122, 126–27 (1969) (en banc) (arguably incorporates *jus tertii* concepts into traditional tests of standing). Similar considerations permit broad concepts of standing in the assertion of claims of First Amendment overbreadth. *See* Broadrick v. Oklahoma, 413 U.S. 601, 610–12, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973); Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972). *See also* Lewis v. City of New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974). While these cases are not controlling, they are an extremely persuasive analogy. *See generally* Note, The First Amendment Overbreadth Doctrine, 83 Harv.L.Rev. 844, 854–58 (1970).

[23] *See* 359 F.2d at 1003; sources cited note 18 *supra*.

[24] *See* FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 477, 60 S.Ct. 693, 84 L.Ed. 869 (1940), *applied in* Sierra Club v. Morton, 405 U.S. 727, 736–38, 740 n. 15, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); Iowa Independent Bankers Ass'n v. Federal Reserve Board, 167 U.S.App.D.C. 286, at 292, 293, 511 F.2d 1288, at 1294–1295.

[25] It is noteworthy that the FCC did not notify Sonderling that it accepted the proffer of $2,000 until May 31, 1973. Joint App. at 62. The Citizens Committee sought remission on May 11.

[26] *See* cases cited note 19 *supra*.

Supreme Court. It should be reheard *en banc* on this point alone.

II. *Procedural Deficiencies in the Commission's Actions*

It is settled beyond peradventure that a censorship scheme is invalid unless it provides for a judicial determination of the protected status of the speech complete with an adversary process which occurs before or immediately after any restraint on speech and which is initiated by the government.[27] Under the FCC censorship scheme, the Commission issues a Notice of Apparent Liability under 47 U.S.C. § 503(b)(2) (1970) of a violation of 47 U.S.C. § 503(b)(1) (1970) and of 18 U.S.C. § 1464 (1970). This Notice is apparently designed to be similar to a formal charge. After receipt of this Notice, a charged licensee may file within thirty days a statement as to why it is not liable for forfeiture and the issue being joined, the Commission will then determine whether or not the licensee is liable. If it makes such a finding or if the licensee does not respond within thirty days, the Commission then enters an order of forfeiture. Apparently, the licensee can ignore this order and force the United States to initiate an action to collect the forfeiture.[28] Seemingly, the licensee could in such a proceeding raise any First Amendment claims it would have.

This process is on its face clearly insufficient under the standards mentioned previously. Here the licensee is forced through an administrative procedure which renders a final judgment of obscenity and from which there is no assurance of prompt judicial review "to prevent the administrative decision of the censor from achieving an effect of finality";[29] and after which there is no explicit preservation of the status quo pending judicial resolution (i. e. the licensee is liable to pay the forfeiture after the FCC decision and is not told to avoid payment until after governmentally initiated judicial review).[30] The necessity of these "sensitive tools" is made doubly important by the relationship between broadcast licensees and their censor, the FCC.

The process is also invalid as applied in this case for, as the Court strongly intimates, Sonderling's Notice of Apparent Liability reads like a decision and states conclusions. In this Court everybody appears to view the Notice as a final judgment and the Commission certainly took that view in its decision rejecting the claims of the Committee.[31] So viewed, the Notice is illegal under the rule of Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1963). Furthermore, as discussed in Part IV *infra*, Chairman Burch's speech and the closed notice of inquiry are also procedurally invalid. This case illustrates the wisdom of the body of doctrine referred to as First

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[27] *See* Southeastern Promotions, Ltd. v. Conrad, — U.S. —, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975); Blount v. Rizzi, 400 U.S. 410, 91 S.Ct. 423, 27 L.Ed.2d 498 (1971); Freedman v. Maryland, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965); Monaghan, First Amendment "Due Process", 83 Harv.L.Rev. 518 (1970). *See also* Paris Adult Theatre I v. Slaton, 413 U.S. 49, 55, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973) and authorities cited. The principle of these cases was applied in Heller v. New York, 413 U.S. 483, 93 S.Ct. 2789, 37 L.Ed.2d 745 (1973) and was not diluted therein.

[28] *See* 47 U.S.C. § 504(a) (1970).

[29] Blount v. Rizzi, 400 U.S. 410, 417, 91 S.Ct. 423, 428, 27 L.Ed.2d 498 (1971), applying Freedman v. Maryland, 380 U.S. 51, 58–60, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). *See also* United States v. Thirty-Seven Photographs, 402 U.S. 363, 369–75, 91 S.Ct. 1400, 28 L.Ed.2d 822 (1971); Teitel Film Corp. v. Cusack, 390 U.S. 139, 88 S.Ct. 754, 19 L.Ed.2d 966 (1968).

[30] *Id.* The dangers of an explicit preservation of the status quo pending judicial resolution are illustrated by the present case and by WUHY-FM, 24 F.C.C.2d 408 (1970), in both cases the licensee preferring to be "responsive" to the final order of its supervisory agency rather than wait for judicial review.

[31] *See* Sonderling Broadcasting Corp., 41 F.C.C.2d 777, 781–82 (1973).

Amendment "Due Process".[32] The Commission's blunderbuss approach to the determination of obscenity caused censorial ripples which effectively curtailed speech not found even by the Commission's staff to be obscene or indecent. It is thus clear that both Sonderling and the Committee were "prejudiced" by the improper procedures utilized by the FCC and, as discussed previously, have standing to assert the invalidity of those procedures. The Court by failing to rule on their claim, I suggest, has sanctioned an unconstitutional censorship scheme inconsistent with modern concepts of the First Amendment.

III. *The Substantive Decision That the Broadcasts Were Obscene*

The Court holds that the Committee may challenge the FCC determination (which everyone assumes is not a mere charge but a final decision) that the broadcasts were obscene but holds that the broadcasts were not obscene under the standards of Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973). The problem with this holding is that the Commission determined that the broadcasts were obscene under the standards of Memoirs of a Woman of Pleasure v. Massachusetts, 383 U.S. 413, 86 S.Ct. 975, 16 L.Ed.2d 1 (1966) and Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957). The Court expressly refuses to affirm this determination and I think, as will be developed below, that the determination is manifestly inconsistent with *Roth* and *Memoirs*. Because the Commission based its decision on *Roth* and *Memoirs*, it did not apply the "local community standard" permitted by *Miller*.[33] Since it did not apply that standard, there is, of course, no evidence in the record as to what the "local community standard" is in the Oak Park-Chicago area. *Miller* quite explicitly provides that the expansion of the test of obscenity lies largely in granting greater power to local fact-finders to apply "local community standards" of decency. Yet the Court affirms the Commission on the basis of *Miller*. The panel takes no notice of "local community standards" and considering the heavy emphasis the Court in *Miller* placed on the role of the fact-finder it would be extremely inappropiate for the Court to become a fact-finder. How can the Court affirm on the basis of *Miller* without resort to the "local community standards" which are the Supreme Court held the linch pin of the new test of obscenity?[34] We might well assume that we could affirm the Commission's decision on a ground it did not use (and thus run counter to one of the most basic principles of administrative law)[35] if it were not for the fact that this new ground requires an evidentiary record which is not presently before us. In short, the Court gives the FCC the benefit of the expansion of the test of obscenity but denies the Committee the benefit of the conditions which the Supreme Court put on that expansion. Such jurisprudence can find no support in the opinions of this Court or any other court. At the very least, the Court should have remanded the case to the Commission in light of *Miller* and require the Commission to take evidence on "local community standards" before reaching a decision under *Miller*.

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[32] *See* Monaghan, *supra* note 27.

[33] *See* Miller v. California, 413 U.S. 15, 30–34, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973).

[34] It is, of course, agreed that the "local community standard" concept applies to federal prosecutions. Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 2901–02, 41 L.Ed.2d 590 (1974). We might assume, as the Supreme Court apparently did in *Hamling*, 418 U.S. at 104–111, 94 S.Ct. at 2901–04, that a juror will apply a "local community standard" instead of a national standard, even though instructed to apply a national standard (although this assumption seems hardly defensible, *see* 418 U.S. at 144–152, 94 S.Ct. at 2921–24 (Brennan, J. dissenting)). We might even further assume that a local judge might not need evidence of a local community standard in order to make a finding of obscenity even though the judge purported to apply a national standard. *Compare Hamling with* Alexander v. Virginia, 413 U.S. 836, 93 S.Ct. 2803, 37 L.Ed.2d 993 (1973). *Cf.* Paris Adult Theatre I v. Slaton, 413 U.S. 49, 56, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973) (films themselves are best evidence of obscenity). But to extend this argument to a national administrative agency which applied a national standard, thus affirming on the basis of a test of obscenity drawn around "local community standards", makes one's head swim. Of course, *Hamling* itself involved a case where the Court affirmed a finding of obscenity on the basis of *Memoirs* and held only that the "local community standard" concept did not on the facts of the case offer sufficient benefit to the defendant to cause reversal and a new trial. Here, it must be emphasized, the Court expressly declines to find the material obscene under *Memoirs*. *See* 418 U.S. at 100, 94 S.Ct. at 2899.

Furthermore, in one important respect *Miller* tightened the test for obscenity by requiring that any statute be drawn specifically to outlaw only patently offensive sexual conduct and the post-*Miller* decisions have indicated that persons charged with obscenity prior to *Miller* should have the benefit of this change of law.[36] The Court makes this statement in regard to a possible claim that 18 U.S.C. § 1464 (1970) and 47 U.S.C. § 503(b)(1) (1970) are insufficiently specific:

> Although Petitioners filed a reply brief after the Court's decision in *Miller*, they did not challenge the possible lack of the requisite statutory specificity. . . . We see no point in pursuing in the abstract the question whether the finding of obscenity here survives the narrowing of the second test . . . in *Miller*, especially since we have the additional elements of titillation and probable exposure to children which even some of the dissenting Justices in *Miller* though sufficient to permit condemnation. . . . Moreover, *Miller's* specificity requirement is designed to provide "fair notice to the dealer" . . . , and it is not clear whether it is a requirement that may be insisted upon by the public when waived by the licensee. Petitioner's goal is to determine what *material* is withdrawn from censorship . . . because of the protections of the First Amendment and that turns primarily on the nature of the social purpose that may redeem material that otherwise stands condemmed.

Surely petitioners did not waive their right to challenge the lack of specificity of the statutes because they did not raise it in their reply brief when the FCC decision was not even based on *Miller*. And why does the Court "see no point in pursuing in the abstract" a central contention that must be considered by every court considering a post-*Miller* statute and which one can assume the petitioners would vigorously assert if they knew *Miller* was in issue? And what is the relevance of titillation and exposure to juveniles to the question of specificity and the general narrowing of the test of obscenity in *Miller*? The *Miller* majority considered the possibility of these events when it developed its substantive test.[37] Is that test to be expanded because the Court was proven right with its concerns in this case? And can it really be seriously asserted that the dissenting Justices would consider specificity any less important merely because the specific speech under review might not be protected?[38]

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[35] *See* SEC v. Chenery Corp., 318 U.S. 80, 92, 63 S.Ct. 454, 87 L.Ed. 626 (1943).

[36] Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 2889–90, 41 L.Ed.2d 590 (1974); United States v. Womack, 166 U.S.App.D.C. 35, 509 F.2d 368 (1974), at 3 (supplemental slip op.). This principle applies only to cases where the judgment was not final prior to the announcement of *Miller*.

[37] *See* Miller v. California, 413 U.S. 15, 19, 27–28, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 57–58, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973). *Cf.* Kaplan v. California, 413 U.S. 115, 120, 93 S.Ct. 2680, 37 L.Ed.2d 492 (1973).

[38] *See* Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 2920–21, 41 L.Ed.2d 590 (1974) (Brennan J. dissenting); Gooding v.

Moreover, the Court says "it is not clear" whether the public may insist upon specificity. But is not the Court under an obligation to decide the point since it is thrown to the forefront by the Court's own reasoning? Furthermore, as discussed in the standing section, Part I *supra*, even if the public had no interest in the specificity the fact that they do have standing entitles them to raise any relevant constitutional claim. Moreover, the specificity requirement provides not only fair notice to the dealer. It is also designed to prevent statutory overbreadth and the attendant chilling effect of overbroad statutes.[39] And the extremely obvious chilling effect in this case has deprived the petitioners of programming they desired. Thus, the specificity requirement clearly protects listeners as well as the dealers. And what is the justification for the assertion that the petitioner's concern is with the material only? The most cursory reading of the briefs indicates that petitioners are not primarily concerned with the specific question of whether Sonderling's broadcasts were obscene but rather with the more general questions of the FCC's power in this delicate area and how that power is to be exercised.

There is another difficulty with the Court's opinion. *Miller* retains the established requirement that material allegedly obscene must be "taken as a whole" in the judgment of obscenity.[40] Here the Commission made its judgment of obscenity on a 22 minute tape which eliminated the bulk of the Sonderling (and other broadcasters') talk show programming not involving sexual discussion. By the admitted facts the FCC did not take the material as a whole but rather viewed the material piece meal. It has taken a similar approach in at least two other cases.[41] I think this is grounds for a remand. The Court has three responses to this reasoning and none are sound.[42] First, the Court suggests that the program is "episodic in nature" and thus justifies a retreat from the established rule. This statement is not supported by the record. The talk shows had a defined subject each day.[43] One must assume that the announcer had some prepared comments to stimulate discussion if none were forthcoming. The only thing episodic was the fact that listeners participate and some people turn off their radio every now and then. Why is this any more episodic than any radio show or television program or, indeed, than reading an illustrated book? This reasoning would swallow up the rule that the material must be taken as a whole; one can not depend on reading or listening habits of some persons to devise a new test for obscenity. Next the Court says that the "pervasive pandering approach here makes the broadcast pornographic even though some of its elements may be unoffensive," citing Ginzburg v. United States, 383 U.S. 463, 471, 86 S.Ct. 942, 16 L.Ed.2d 31 (1966). This argument is unresponsive first because it misreads *Ginzburg* which held only that the factfinder may consider evidence of the manner of sale and not that pandering

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Wilson, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972).

[39] *See* sources cited note 20 *supra*.

[40] 413 U.S. at 24, 93 S.Ct. 2607. This requirement was retained from *Memoirs*, 383 U.S. at 418, 86 S.Ct. 975.

[41] *See* WUHY-FM, 24 F.C.C.2d 408 (1970); Palmetto Broadcasting Co., 33 F.C.C. 250 (1962), recon. denied, 34 F.C.C. 101 (1963) affirmed on other grounds sub nom. Robinson v. FCC, 118 U.S.App.D.C. 144, 334 F.2d 534, cert. denied, 379 U.S. 843, 85 S.Ct. 84, 13 L.Ed.2d 49 (1964). *See also* Arnoud J. Rolle, 31 F.C.C.2d 533 (1970); the "raised eyebrow" harassment of KRAB-FM in Jack Straw Mem. Foundation, 21 F.C.C.2d 833, hearing ordered on recon., 24 F.C.C.2d 266 (1970), license renewed, 29 F.C.C.2d 334 (1971); Mile High Stations, Inc., 28 F.C.C. 795 (1960); WREC Broadcasting Service, 19 F.C.C. 1082 (1955); Note, Offensive Speech and the FCC, 79 Yale L.J. 1343, 1349, 1359-68 (1970) and cases cited.

[42] Slip op. at 406.

[43] *See* the Sonderling program sheets in the Joint App. at 23-25.

creates a new test of obscenity,[44] and second, because the FCC could not have considered the effect of pandering on the whole of the broadcasts without at least hearing them, and that, it is conceded, they did not. Third, the Court would change *sub silentio* the traditional test that the material must be taken as a whole by placing the burden on intervenors to present evidence of the whole if they think the whole is different than the dirty parts. First, the intervenors who after all did not come into the picture until after the Notice had been issued, did suggest this point to the FCC.[45] Second, the censoring agent has under established doctrine an affirmative duty to consider the whole; this duty is not dependent on whether any one objects at the agency level.

Returning to the issue of specificity, it seems clear enough that 18 U.S.C. § 1464 (1970) must be construed to cover only the material held to be obscene under the *Miller* standards.[46] This construction renders the statute sufficiently specific. However, we confront an unusual case here when we consider past FCC practice in applying § 1464 by means of § 503(b)(1). That practice indicates that the FCC has demonstrated what one can most charitably describe as a total ignorance of the constitutional definition of obscenity.[47] The most blatant example is the decision in WUHY-FM, 24 F.C.C.2d 408 (1970) which is completely inconsistent with Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971). *WUHY-FM* also erected a separate standard of "indecency" which excludes from the test of obscenity the requirement that the language appeal to a prurient interest in sex. This separate test, applied to Sonderling's broadcast, is inconsistent with *Miller*.[48] Thus, since we have a defini-

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[44] *See* Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 2914, 41 L.Ed.2d 590 (1974).

[45] *See* Joint App. at 69.

[46] This follows by necessary implication from Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 2904–07, 41 L.Ed.2d 590 (1974) which so construed 18 U.S.C. § 1461 (1970) to save it from invalidity. This course has been followed by other courts construing § 1464, *see* United States v. Smith, 467 F.2d 1126 (7th Cir. 1972); Tallman v. United States, 465 F.2d 282 (7th Cir. 1972); Gagliardo v. United States, 366 F.2d 720 (9th Cir. 1966).

[47] *See* cases cited note 41 *supra*. *See also* Warren J. Currence, 33 F.C.C. 827 (1962) (Hearing Exam.), adopted, 34 F.C.C. 761 (Rev.Bd.1963), and Pacifica Foundation, 32 P & F Radio Reg.2d 1331 (1975) (on "utterly without redeeming social value" and "patently offensive" portions of the obscenity test). The one bright spot is the decision in Pacifica Foundation, 36 F.C.C. 147 (1964) although it must be noted that even that decision in favor of the licensee came after a long battle with the many attendant "chilling effects" of fighting the FCC. *See* Note, Morality and the Broadcast Media, 84 Harv.L.Rev. 664, 667–71 (1971). The error of the FCC interpretation may be illustrated by reference to the recent case of Jenkins v. Georgia, 418 U.S. 153, 94 S.Ct. 2750, 2755, 41 L.Ed.2d 642 (1974) where the Court made clear that the conscious depiction of sexual acts in a lewd manner was the *sine qua non* of obscenity. *See* Miller v. California, 413 U.S. 15, 24, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973); Kaplan v. California, 413 U.S. 115, 119, 93 S.Ct. 2680, 37 L.Ed.2d 492 (1973) which includes description as well as depiction. The words found obscene by the FCC are patently outside this standard.

[48] *See* 413 U.S. at 24, 93 S.Ct. 2607; discussion in note 47 *supra*.

In a recent decision and a simultaneous report to Congress, *see* Pacifica Foundation, No. 75-200, 32 P & F Radio Reg.2d 1381 (1975); Broadcast of Violent, Indecent and Obscene Material, 32 P & F Radio Reg.2d 1367 (1975), the Commission sought to justify this "indecent" standard by reference to privacy interests and probable exposure to children and analogized the prohibition to nuisance law. They cited Rowan v. Post Office Dep't, 397 U.S. 728, 90 S.Ct. 1484, 25 L.Ed.2d 736 (1970); Williams v. District of Columbia, 136 U.S.App.D.C. 56, 419 F.2d 638 (1969); Von Sleichter v. United States, 153 U.S.App.D.C. 169, 472 F.2d 1244 (1972). The Commission also made reference to the statement in *Miller*, 413 U.S. at 18–19, 93 S.Ct. 2607, to the effect that the Supreme Court had held prior to *Miller* that probability of exposure to juveniles was a proper ground for regulation. This statement is taken out of context. The Court was there simply averting to past practice; it went on in its opinion to hold that this legitimate interest in pretive construction of a statute by the agency which, we assume for purposes of deciding this point, is authorized in part to enforce it, a construction which is massively overboard under even the *Miller* test, I think a substantial question is raised whether § 503(b)(1), and not § 1464, is overbroad and hence facially invalid.[49] The Court avoids this issue even though it is clearly raised by the Committee but does not tell us why it does not rule on the point. I suggest the point be considered by the Court *en banc.*

It hardly needs saying that the Commission's substantive decision cannot be sustained on the basis of *Memoirs* and *Roth*. First the broadcasts involved no visual material. Second, there clearly was an arguable "redeeming social value" to the broadcasts[50] and thus we

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venting exposure to juveniles was to be incorporated into the substantive test of obscenity. *See* note 53 *infra.* To the extent *Williams* and *Von Sleichter* permit a "nuisance" statute which proscribes words not obscene under *Miller*, I think they are overruled by Lewis v. City of New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974); Popish v. Univ. of Missouri Curators, 410 U.S. 667, 93 S.Ct. 1197, 35 L.Ed.2d 618 (1973) and Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972), as Judge Wright stated in his dissent in *Von Sleichter*, 479 F.2d at 1250–53, 1257–58. In any event, *Von Sleichter* was careful to uphold only an *arrest* not a final determination of obscenity and *Williams* phrases its test to permit proscription largely in terms of pre-*Miller* obscenity doctrine. Thus, it would seem very, very difficult to hold that a radical expansion of the pre-*Miller* test of obscenity by the FCC can be justified by reference to *Williams* and nuisance doctrine. The *Miller* test itself relies so heavily on the specificity rationale and the local community standards concept that the FCC position on indecency which eliminates those tests is surely inconsistent with *Miller*. The parameters of such an expansion can only be estimated and the asserted public policy supporting it has never been accepted under modern First Amendment doctrine. Once again Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971) is controlling. *Rowan*, to the extent it is relevant at all, derogates from the FCC's position, since it merely upholds a law permitting an addressee to take his name off mass circular mailing lists. I assume we need no act of Congress to authorize an individual to turn off his or her radio. *Rowan* thus suggests that the FCC "nuisance" theory is invalid since there is no "involuntary" listening and concomitant invasion of privacy. *See* note 53 *infra*; Redrup v. New York, 386 U.S. 767, 769, 87 S.Ct. 1414, 1415, 18 L.Ed.2d 515 (1967) (*dictum*; "assault upon individual privacy by publication in a manner so obstrusive as to make it impossible for an unwilling individual to avoid exposure . . ."); *Williams, supra,* 419 F.2d at 646.

[49] *Compare* Lewis v. City of New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974); Plummer v. City of Columbus, 414 U.S. 2, 94 S.Ct. 17, 38 L.Ed.2d 3 (1973); Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972) (statutes as authoritatively construed by state court are unconstitutionally broad). While it might be argued that Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974) requires this Court to construe the statute to avoid overbreadth, it seems apparent that previous court-imposed restrictions, particularly that imposed in Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957), have not permeated the FCC. This inability to control the FCC in its determinations prevents us from construing the statute in order to save it. Rather, the statute should be re-drawn by Congress to impose more explicit restraints on the FCC. *See* Blount v. Rizzi, 400 U.S. 410, 419, 91 S.Ct. 423, 27 L.Ed.2d 498 (1971).

[50] Memoirs of a Women of Pleasure v. Massachusetts, 383 U.S. 413, 419–20, 86 S.Ct. 975, 16 L.Ed.2d 1 (1966) is right on point. *See* Jacobellis v. Ohio, 378 U.S. 184, 191, 84 S.Ct. 1676, 12 L.Ed.2d 793 (1964); Roth v. United States, 354 U.S. 476, 487–88, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957); Commonwealth v. Dell Publications, Inc., 427 Pa. 189, 233 A.2d 840, 849–51 (1967); Keuper v. Wilson, 111 N.J.Super. 489, 268 A.2d 753, 757–59 (Ch.1970). *See also* Ginzburg v. United States, 383 U.S. 463, 472–74, 86 S.Ct. 942, 16 L.Ed.2d 31 (1966). The potential redeeming social interest in these materials lies in their discussion of adjustment to changing social mores on sexual relations and in the discussion of sexual problems as a means of solving personal "hang-ups." This is, after all, the method of psychotherapy. On this point, *see* Dalrymple, Sex and the College Student, National Observor, April 7, 1973, at 27. *See also* R. Bell, Premarital Sex in a Changing Society (1966); W. Reich, The Sexual Revolution (4th ed. 1969); Eliasberg, Psychiatric Viewpoints on Indecency, Obscenity, and Por-

would be hard pressed to hold that the broadcasts were "utterly without" redeeming social value. Third, the Commission in its decision relied on several of its precedents which are inconsistent with *Memoirs* and *Roth*, most particularly the amazing *WUHY* decision. Finally, the FCC simply misunderstood the meaning of the *Ginzburg* case and adopted a view of pandering which equates all commercialization of speech with titillation. There is no significant evidence of *Ginzburg*-type pandering.[51] The Commission's constant references to "pandering" and "titillation" apparently suggest that all commercial radio is "titillating" because the licensee must sell advertising in order to stay in business. This is indeed a problem under a communications system which relies on entreprenuer licensees but I hardly think the FCC is prepared to call all programming "titillation" merely because the licensee hopes to make money by selling advertising.[52] And there is *absolutely nothing* in this record that indicates that Sonderling's broadcasts were in any manner different from the normal run of commercial radio shows in terms of commercialization or advertising appeal. It appears that the FCC defines a "panderer" as anyone who caters to tastes the FCC deems worthy of censorship. *Ginzburg* may not be stretched so far. The FCC makes reference to the pervasive, intrusive nature of radio to justify its result, but I do not think that nature alone can justify a retreat from the *Memoirs-Roth* standard absent some Commission effort to find less drastic means of protecting the unsuspecting listener.[53] The FCC may not wave this

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nography in Literature and the Arts, 16 Am. J. Psychotherapy 477 (1962); A. Comfort, The Anxiety Makers (1970). The FCC seeks to avoid this conclusion by stating that the discussion was not "serious" but was rather an "exploitation" of sexual material. Sonderling Broadcasting Corp., 27 P & F Radio Reg.2d 285, 290 (1973). This statement may have anticipated *Miller*, but it is surely not responsive to the *Memoirs* test which requires that the material be "utterly without" redeeming social value.

[51] *Compare* the evidence collected as 383 U.S. 463, 467–70, 86 S.Ct. 942, 16 L.Ed.2d 31 *with* the evidence, if it may be so characterized, in Sonderling Broadcasting Corp., 27 P & F Radio Reg.2d 285, 286–87, 292 (1973). The Court finds evidence of pandering from an excerpt cited by the FCC for a different purpose, *id.* at 292, and characterizes it as "leering innuendo." This is simply a gross exaggeration. One excerpt involved the announcer's attempt to put off a complaining listener and there was no evidence *at all* of pandering the show (quite the reverse). The second involved the changeover from the format to a commercial, during which the announcer joked about the transition. How the Court can find commercialization of orgasms through the sale of car insurance is simply beyond my comprehension. Even the FCC did not try to do that. This is *all* the evidence, outside of the fact that the show is a commercial, as opposed to a non-commercial, show, of pandering. I hardly think *Ginzburg* extends to condemn all commercially financed speech.

[52] *Cf.* Smith v. California, 361 U.S. 147, 150, 80 S.Ct. 215, 4 L.Ed.2d 205 (1961). This problem of a commercial motive permitting otherwise impermissible regulation of the content of speech was broached in Citizens Comm. to Save WEFM v. FCC, 165 U.S.App.D.C. 185, 207, 506 F.2d 246, 268 (1974) (*en banc*) and in *id.* at 272 (Bazelon, C. J. concurring in the result.) *See* Banzhaf v. FCC, 132 U.S.App.D.C. 14, 405 F.2d 1082, 1100 n. 76 (1968), cert. denied, 396 U.S. 842, 90 S.Ct. 50, 24 L.Ed.2d 93 (1969). The problem cannot be resolved in terms of obscenity on this record since the FCC did not explicitly make it a basis for decision.

[53] *See* note 48 *supra.* The FCC discussion of the point may be found at Sonderling Broadcasting Corp., 27 P & F Radio Reg.2d 285, 288–90 (1973); Sonderling Broadcasting Corp., 41 F.C.C.2d 777, 782 (1973). The Commission has recently relied on the pervasive nature of the medium and the probable exposure to children to reaffirm its position on obscenity. *See* Pacifica Foundation No. 32 P & F Radio Reg.2d 1331 (1975); Broadcast of Violent, Indecent and Obscene Material, No. 32 P & F Radio Reg.2d 1367 (1975).

Notable is the fact that the FCC misinterprets *Miller* on the point about dissemination to children. The possibility of dissemination to children is incorporated into the new test of obscenity and is not grounds for expanding the *Miller* test. *See* 413 U.S. at 19, 27–28, 93 S.Ct. 2607; Paris Adult Theatre I v. Slaton, 413 U.S. 49, 57–58, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973). *Cf.*

argument like a wand and magically alter established legal standards to fit its pre-ordained results.[54] I would, at a minimum, reverse and remand in light of *Miller*.

I cannot, of course, consider whether the broadcasts are obscene under *Miller* until we have some evidence of a local community standard and that evidence is applied by a fact-finder. But there is one other ground for remand which I think is sufficient. That is the inconsistency of the FCC's treatment of Sonderling and the other stations which were running the sexual talk shows. Sonderling alleges that its shows were no different than those of Storer and Metromedia. The Commission does not discuss the point. The apparent inconsistency between the disposition of the Sonderling case and the other cases calls for an explanation and that is, in my view, grounds enough for a remand.[55]

IV. *The Whole of the Commission Policy on the Talk Shows*

As I indicated, the most pervasive error in the Court's opinion is the failure to see the whole of the Commission's policy instead focusing only on the Sonderling forfeiture. When one conceives of the Commission's "decision" as not a specific attack on Sonderling but rather as a general attack on all sex-oriented talk shows, the magnitude of the Commission's censorship and its consequent illegality become apparent. Here the Commission has effectively terminated sex-oriented talk shows without any due process for the licensees, without any consideration of the individual merits of different shows, and without any participation by the courts which are given the primary burden of defining obscenity. The Commission states that it did not intend for all this to happen merely from the promulgation of a closed notice of inquiry and the prosecution of Sonderling. We may certainly accord this assertion little weight. Most obviously Chairman Burch in his speech condemned all sex-oriented radio talk shows[56] and stated his "hope" that industry self-regulation would render the controversy moot. As noted previously, his "hopes" were fulfilled. Then we

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Kaplan v. California, 413 U.S. 115, 120, 93 S.Ct. 2680, 37 L.Ed.2d 492 (1973) (on the pervasive distribution of books which gives rise to probable exposure to juveniles). While it has been held prior to *Miller* that a separate test of obscenity may be used for minors, Ginsberg v. New York, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968), it was also held that a statute designed to protect children could not prohibit adult access to protected material. Butler v. Michigan, 352 U.S. 380, 383–84, 77 S.Ct. 524, 1 L.Ed.2d 412 (1957). Apparently what the FCC means by the pervasive, intrusive nature of radio is the fact that some radio listening is involuntary (the listener may tune in by accident). *See* Banzhaf v. FCC, 132 U.S.App.D.C. 14, 405 F.2d 1082, 1100–01 (1968), cert. denied, 396 U.S. 842, 90 S.Ct. 50, 24 L.Ed.2d 93 (1969), *cited in* Columbia Broadcasting System, Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 128, 93 S.Ct. 2080, 36 L.Ed.2d 772 (1973). It seems that many less drastic means could virtually eliminate this involuntary aspect without imposing censorship on the show itself, *e. g.*, regularly broadcast warnings, warnings when specific subjects are broached, advertisement that the show is for "adults only", *etc.* The broadcast industry has adopted such a warning system after some raised eyebrow pressure. Broadcast of Violent, Indecent and Obscene Material, *supra* at 1370–74. *See* Note, *supra* note 47, at 683. After all, while the listener may accidently tune in, he or she may easily tune out. Radios do have tuning dials. A continuous talk show is much different than the advertising found in *Banzhaf* to be forced on viewers and listeners.

[54] *See* Times Film Corp. v. City of Chicago, 365 U.S. 43, 75–78, 81 S.Ct. 391, 5 L.Ed.2d 403 (1961) (Warren, C. J. dissenting).

[55] *See* Columbia Broadcasting System, Inc. v. FCC, 147 U.S.App.D.C. 175, 454 F.2d 1018, 1026–27 (1971); Melody Music, Inc. v. FCC, 120 U.S.App.D.C. 241, 345 F.2d 730, 733 (1965).

[56] Address by Chairman Dean Burch, *supra* note 4. The speech did state that discussion of sex was not *per se* obscene but this remark was directed to non-talk show programming. The Chairman's remarks were not in any manner directed to any specific show of a particular licensee but condemned the shows in general.

have the closed notice of inquiry promulgated after the Commission had actually investigated the subject and after it had decided to prosecute Sonderling and which coincided with the national convention of the NAB. There is no evidence that the closed notice of inquiry actually did anything. Its function apparently was its effect on the broadcasters. Finally, we have the selected prosecution of Sonderling as, apparently, an "example" for other broadcasters to heed.[57] Moreover, the FCC is as aware as the licensees of the relationship between the licensees and the Commission and knows exactly how the "raised eyebrow" technique works. That technique was used with precision and success to achieve the goal of eliminating the sex-oriented talk shows. It stretches credulity to assume the FCC was not at least aware of the impact of its concerted actions and did not realize how extensive that impact would be.

In any event, regardless of the intent of the Commission the effect of the Commission's actions was to severely chill what we must assume (absent evidence to the contrary) is protected First Amendment activity. The Commission's procedures are thus under established precedent invalid[58] and the closed notice of inquiry should be rescinded, the forfeiture of Sonderling remitted and the tone and content of the Chairman's speech disavowed as FCC policy.[59] One argument that could be presented in opposition is that these procedures were necessary for the Commission to carry out its enforcement responsibilities under 47 U.S.C. § 503(b)(1) (1970). The short answer is that the Commission can execute those responsibilities without the concert of "raised eyebrow" tactics which decorate this record.

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[57] *See* —— U.S.App.D.C. page ——, 515 F.2d page 420, *supra*. Of course, if the FCC can point to a significant difference between Sonderling and the other licensees in regard to the material on the talk shows, the inference drawn in the text would be refuted. However, no such difference was suggested by the Commission.

[58] *See* authorities cited notes 27, 29 *supra* and in particular Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 83 S.Ct. 1678, 14 L.Ed.2d 510 (1963) which condemns public harassment by local morality committees. *Cf.* Steffel v. Thompson, 415 U.S. 452, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974); Dombrowski v. Pfister, 380 U.S. 479, 486–90, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965). *See also* Times Film Corp. v. City of Chicago, 365 U.S. 43, 69–72, 81 S.Ct. 391, 5 L.Ed.2d 403 (1961) (Warren, C. J. dissenting); Kalven, "Uninhibited Robust and Wide-Open"—A Note on Free Speech and the Warren Court, 67 Mich.L.Rev. 289, 297 (1968); Note, *supra* note 47, at 694–99; Caldwell, Censorship of Radio Programs, 1 J. Radio Law 441 (1931); Comment, Indirect Censorship of Radio Programs, 40 Yale L.J. 967 (1931).

[59] The Commission and the Court find that the Chairman's speech is not "agency action", 5 U.S.C. § 551(13) (1970), for purposes of judicial review. I am less convinced of this but see no need to answer the question in this case. Whether or not the speech is agency action, it surely provides material for determining the meaning of what we all concede is agency action—the initiation of the closed inquiry. The Commission and the Court call the speech "the unofficial expression of the views of one member of the Commission." Slip op. at 402. This is a distortion. Burch gave the *annual* Chairman's speech to the convention of the regulated industry. He was clearly speaking for the Commission, as its representative, and the speech is replete with references to "we" and the "Commission". This is far more than an off-the-cuff statement by a dissident Commissioner. As such it has meaning to the licensees as they attempt to avoid problems with the FCC and it should have meaning to a reviewing court. In any event, since the Commission itself seems to admit that its actions caused a chill on programming, it would seem to do little harm for the Commission to state that the Chairman's speech does not represent FCC policy, if it in fact does not.

Consideration of the speech as part of a set of invalid procedures is supported by First Amendment overbreadth doctrine. This doctrine in part operates to prevent any "chilling effects" on protected activity by governmental action by requiring that the governmental action be no more than is precisely necessary to achieve the governmental objective. *See* Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); United States v. Robel, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967); NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963). *See also* Shuttlesworth v. City of Birmingham, 394 U.S. 147, 150–51, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969); sources cited notes 27, 29 *supra*. The law thus recognizes that the unstated implications of governmental activity might deter protected expression and on that basis renders governmental action unconstitutional. *See* Branzburg v. Hayes, 408 U.S. 665, 733–36, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972) (Stewart, J. dissenting); Note, The First Amendment Overbreadth Doctrine, 83 Harv.L.Rev.

But this argument leads to the larger question of whether the sensitive relationship between the licensees and the FCC makes any Commission enforcement of obscenity statutes an impermissible "chilling effect" on the exercise of protected First Amendment interests. I have already stated that I think the present procedures for assessment of forfeiture by the FCC are deficient under established precedent.[60] The question now raised is whether any FCC enforcement of obscenity prohibitions prior to a judicial determination of obscenity is inconsistent with the broad principles of First Amendment "due process".[61] This question is made more pressing by the fact that 47 U.S.C. § 503(b)(1) (1970) is not clear on the issue of whether the Commission may issue a forfeiture prior to a judicial determination and its language can be read to support the position that the Commission may not so act.[62] Furthermore, the FCC until 1970 and the incredible *WUHY* decision had held that it would not institute forfeiture proceedings until after a judicial determination and would instead refer all obscenity complaints to the Justice Department.[63] We thus have a very se-

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841, 852–54 (1970). *See also* Steffel v. Thompson, 415 U.S. 452, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974). On the basis of this doctrine, it seems manifestly proper to discern the true meaning of a particular FCC policy as the persons to whom the policy is directed perceive it, and to resolve legal questions on the basis of that meaning. Yale Broadcasting Co. v. FCC, 155 U.S.App.D.C. 390, 478 F.2d 594, 605, cert. denied, 414 U.S. 914, 94 S.Ct. 211, 38 L.Ed.2d 152 (1973) (Statement of Bazelon, C. J.) *citing* Anti-Defamation League of B'nai B'rith v. FCC, 131 U.S.App.D.C. 146, 403 F.2d 169, 171 (1968), cert. denied, 394 U.S. 930, 89 S.Ct. 1190, 22 L.Ed.2d 459 (1969).

On the interpretation of the closed notice of inquiry as part of a more general policy, *compare* Moss v. CAB, 139 U.S.App.D.C. 150, 430 F.2d 891 (1970). *See also* Stokes v. Lecce, 384 F.Supp. 1039 (E.D.Pa.1974).

[60] *See* 169 U.S.App.D.C. pages —— - ——, 515 F.2d pages 414–415 *supra*.

[61] *See* note 27 *supra*. *Compare* the analysis of Shuttlesworth v. City of Birmingham, 394 U.S. 147, 150–51, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969); NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); Dombrowski v. Pfister, 380 U.S. 479, 486–90, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965).

[62] 47 U.S.C. § 503(b)(1)(E) (1970) speaks in terms of one who "violates" 18 U.S.C. § 1464 (1970) and thus may refer only to one adjudicated in violation and not one merely charged with a violation by the FCC (who can only charge a violation and not conclusively adjudicate a violation). The legislative history is similarly unclear. Originally, the FCC was given enforcement powers over obscene broadcasts. *See* Duncan v. United States, 48 F.2d 128 (9th Cir.), cert denied, 283 U.S. 863, 51 S.Ct. 656, 75 L.Ed. 1468 (1931). In 1948, the prohibition on obscene broadcasts was moved to Title 18 and nothing in Title 47 authorized the FCC to consider obscenity in a forfeiture proceeding. In 1960 Congress added § 503 to grant authority to the FCC to aid in the enforcement of anti-quiz fraud provisions. Public Law 86–752, 74 Stat. 889. It was not stated whether the FCC was to have co-ordinate enforcement powers with the Department of Justice. The Commission in Sonderling Broadcasting Corp., 41 F.C.C.2d 777, 778, 781 (1973) argues that FCC v. American Broadcasting Co., 347 U.S. 284, 289–90 & n.7, 74 S.Ct. 593, 98 L.Ed. 699 (1954) establishes this concurrent enforcement authority. The Commission misinterprets this case. The Supreme Court therein referred only to the power to enforce the general law upon licensees by revoking or failing to renew a license and expressly declined to hold in a comprehensive footnote that the FCC has forfeiture powers. The power to adjudicate violations of a criminal statute to impose a forfeiture prior to judicial review of the adjudication is a far cry from considering adjudicated illegal conduct or allegations of illegal conduct at license renewal time. *See* the perceptive discussion of this argument in Note, Broadcasting Obscene Language, 43 Ariz.St.L.J. 457, 466–70 (1974).

[63] *See* Hearings on S. 2004 Before the Subcomm. on Communications of the Senate Committee on Commerce, 91st Cong., 1st Sess.

rious question of statutory construction which in my view should engage the attention of the entire court. The Court pursuant to its newly enunciated standing principle whereby the complainant is denied standing on any issue the Court thinks might be valid and given standing on the other, invalid issues decides that only the licensee can raise this statutory construction argument.[64] As noted twice previously, there is no doctrinal support for this concept of standing. I would have the statutory construction argument fully briefed before the Court *en banc* before venturing an opinion on its merits.

The Committee makes one final contention relevant to this statutory construction issue which is deserving of comment. This is that the FCC as a national administrative agency is not equipped to make a finding of whether speech appeals to a prurient interest under contemporary community standards (qua *Memoirs-Roth*) or under a "local community standard" (qua *Miller*). The Court states that since the Supreme Court has found that jury trials are not required in obscenity decisions the Committee's contention has no merit. This argument considers the Committee's contention out of context and is irrelevant to the larger question of whether a national administrative agency can be compared even to a local trial judge. The Committee's contention assumes even more magnitude in light of the emphasis in *Miller* on the special role of the fact-finder.[65] This contention should be incorporated into the statutory construction issue previously mentioned and considered by the Court *en banc*.

V. *Conclusion*

The First Amendment must, first, last and always, depend on the force of reason and constitutional command to vindicate its principle in favor of such unpopular speech as we have here. The Amendment is fragile, its commands easily avoided and its defense always difficult because the easy cases never come into court. As with too many other constitutional provisions, the First Amendment is better contemplated engraved in stone on the courthouse wall than in the complex mixture of a litigation which requires the resolution of genuinely competing interests. Judge Wright in an opinion issued ten years ago warned us to the dangers of FCC regulation of program content.[66] And we now find that the warning was more justified than we could imagine. I hope that warning falls on more sensitive ears in the future. This case in many respects resembles Times Film Corp. v. City of Chicago, 365 U.S. 43, 81 S.Ct. 391, 5 L.Ed.2d 403 (1961) in which the Supreme Court upheld a movie censorship scheme over an eloquent and powerful dissent by Chief Justice Warren. After reviewing several "astonishing" examples of movie censorship, the former Chief Justice made the following statement at page 77, 81 S.Ct. at page 409 which deserves endless repetition:

> The contention may be advanced that the impact of motion pictures is such that a licensing system of prior censorship is permissible. There are several answers to this, the first of which I think is the Constitution itself. Although it is an open question whether the impact of motion pictures is greater or less than that of other media, there is not much doubt that the exposure of television far exceeds that of motion pictures . . . But, even if the impact of the motion picture is greater than that of other media, that fact constitutes no basis

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347, 357 (1969); WUHY-FM, 24 F.C.C.2d 408 (1970). Apparently "raised eyebrow" pressure by Senator Pastore in those Hearings just cited, at 357-63, was partly responsible for the FCC's change of enforcement posture.

[64] Slip op. at 515 U.S.App.D.C. —, 515 F.2d 403 n.13.

[65] *See* 413 U.S. at 26, 30–34, 93 S.Ct. 2607.

[66] Robinson v. FCC, 118 U.S.App.D.C. 144, 334 F.2d 534, 537 cert. denied, 379 U.S. 843, 85 S.Ct. 84, 13 L.Ed.2d 49 (1964) (Wright, J. concurring in the denial of rehearing *en banc*).

for the argument that motion pictures should be subject to greater suppression. This is the traditional argument made in the censor's behalf; this is the argument advanced against newspapers at the time of the invention of the printing press. The argument was ultimately rejected in England, and has been consistently held to be contrary to our Constitution. No compelling reason has been predicated for accepting the contention now.

Considering the pervasive regulatory scheme which the FCC is directed to administer, it is perhaps difficult for the FCC to avoid use of "raised eyebrow" tactics such as we confront here. It is, furthermore, easy to understand the Court's apparent unwillingness to look at the reality of the relationship between the Commission and the licensees in favor of a circumspect examination of specific incidents of regulatory activity. A complete sensitivity to the innuendo of that relationship in review of FCC actions leads one down the proverbial "slippery slope" and opens up the law to new information which threatens many established rules and policies. This makes the task of initial decision by the Commission and review by this Court much more demanding, but it is a demand we must not avoid. I have myself made public comments about television programming which might have some effect on broadcasters (although I certainly do not seriously believe they did) and perhaps my own speeches could be viewed as unconstitutional under the reasoning of this opinion. And it might well be that the root problem is not the use of "raised eyebrow" tactics, and the attendant problems of developing a principled judicial control of those tactics, but the very exsitence of a comprehensive scheme for the licensing of speakers. As I noted in another context,[67] since it is impossible to sweep away the licensing scheme and its predicate of scarcity without Congressional action, the task of the courts must be to vigilantly oversee FCC administration of the regulatory scheme to eliminate the various "chilling effects" of that scheme, no matter how difficult the role of overseer may be. This case presents an excellent example of both the need for such a judicial role and for the manner in which exercise of that role will be avoided.

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[67] Citizens Comm. to Save WEFM v. FCC, 165 U.S.App.D.C. 185, 220–21, 506 F.2d 246, 281–82 (1974) (Bazelon, C. J. concurring in the result).

Mr. Van Deerlin. Thank you.

You haven't made much reference to the association that you are here representing.

Mr. Fleishman. Well, I would be pleased to. I have attached as an exhibit, exhibit A, a statement, which, perhaps, I ought to read. I think it is of great significance. It is an advertisement that was placed in the Washington Post last year, and it starts:

> A call to the people and the Congress of the United States of America to abolish the un-American obscenity laws.

It reads, if I may, because it is brief, Mr. Chairman:

> We all know that censorship is dangerous and the eternal enemy of freedom and liberty, yet, year after year, the Federal Government wastes tens of millions of tax dollars prosecuting publishers, film producers, distributors, and exhibitors who merchandise so-called pornography to forewarned adults.
>
> More persons are prosecuted and jailed in our nation for distributing objectionable publications—and objectionable is in quotes—than any other country in the world.
>
> The obscenity prosecutions are an exercise in hypocrisy. Government-sponsored studies demonstrate that most adults seek sexually explicit materials as a source of entertainment and information with no harmful effect.
>
> A Presidential Commission on Obscenity and Pornography, after spending two million tax dollars in scientific research, concluded that the obscenity laws, as they apply to willing, forewarned adults, should be abolished.
>
> Americans deeply value the right of individuals to determine for themselves what books they wish to read and what pictures and films they wish to see. Our traditions of free speech and free press also value and protect the right of writers and filmmakers to serve diverse interests of the American public.
>
> We have had enough censorship by "Big Brother." We urge the new Congress to examine the report of the President's Commission on Obscenity and Pornography and implement the wise recommendations of that commission to abolish obscenity laws as applied to forewarned adults.

That is basically the position of the organization. The members of the organization have been in the forefront, Mr. Chairman, of the censorship war that has been going on in this country for many years.

For example, the Federal Government has been, selectively, choosing forums to prosecute. The most recent example is what took place in Memphis, Tenn., where the Federal Government brought a series of obscenity prosecutions against various motion picture films, including actors, directors, in the film, in an area that the Government selected, knowing that the area was relatively hostile to explicit, sexual portrayal, so that there was jurypicking, there was judge picking, and there was a great deal of unfairness, just in terms of taking a lot of people from the North and the West to trial in Memphis, Tenn.

So, our organization has had a great deal of experience with censorship.

Mr. Van Deerlin. Of course, many who would defend the right of an exhibitor to show a film in a theater where someone pays his money down and goes in by choice, would not go the next step, which is to say that conventional television should carry the same sort of material.

Mr. Fleishman. No. I agree that there are problems, and I don't want to be heard as saying that there aren't things that can be done that would not be unconstitutional. I think there are things that can be done that would be constitutional.

I think, for example, explicit films could appropriately have the forewarnings we have been talking about. I think that there should be, as they have in France, some kind of signal telling people what is going on; but, I think, ultimately, we have to depend on family. I think, in the end, the parent ought to tell the kid, "I don't want you to watch 'Deep Throat' and if you do, I am going to knock your head off." That is all. I mean, there is no way that you are going to be able to get the Government to come in there and to say, "Nice," you know, to the kid, and you know, "It is all OK."

If parents are concerned with what their kids see, then the parents should take some responsibility.

Mr. Van Deerlin. Mr. Waxman.

Mr. Waxman. Mr. Fleishman, given your view of Mr. Cowan's suggestion, that negative and positive requirements may or may not be constitutional, your view that, under no circumstances, would it be constitutional, do you think that a restriction—not the restriction, but the provision that requires equal time to candidates is unconstitutional, or that the access rule for discussion of public issues is also unconstitutional?

Mr. Fleishman. I think it is unconstitutional for the same reason that it was found to be unconstitutional when the Supreme Court had that issue with regard to whether a newspaper was required to give equal time—or to give a candidate equal time, yes.

When you say that a broadcaster must do this, you are, at the same time, saying he can't do what he wants to do. I think that is just censorship sugarcoated. I mean, that is what I call, you know—some people say, "Well, that is blue censorship, but let us call it by some good name. Say, well this is censorship, but it is good censorship."

I don't think any censorship is good; therefore, although I would like to see more diversity, I think you are going to have to find that diversity by having more stations, by having just as—you have, in the motion pictures now, having broken up the monopoly—there are more independents, you have greater diversity, and by and large, you have a much richer screen.

I think that if you are able to effectively break the monopolistic end of the business, because there is no question but that the networks, particularly, are making an enormous amount of money and they have a vested interest in the status quo. They are not going to do anything where their license is jeopardized, in any way, where they are going to be faced with any eyebrow raising by the FCC.

But, if you had small stations out there, they would take some chances, just as some independent film makers took some chances, and we would all benefit from that.

Mr. Waxman. Isn't the analogy going to be closer to the newspaper situation? Look at Los Angeles. We have one major newspaper that gives us, as you say, the good, bad, and the indifferent.

Mr. Fleishman. That is unhappy. On the other hand, we have some weeklys. We do have, as little as it is, at least, the opportunity for a small paper to come out and say what it will.

Mr. Waxman. Why do you abhor Government censorship? Aren't you troubled by the publisher of a newspaper making the determination of what will and will not be printed?

Mr. Fleishman. No. Not at all.

Mr. Waxman. You are not?

Mr. **Fleishman**. Not at all. I mean, I don't like it. I mean, I think that, ultimately, the power in the hands of a newspaper is not as good as having the power in—I mean, I want to have the power. I guess we all want to have the power, but there is all the difference in the world between censorship by Government and censorship by a private company, CBS, or the Los Angeles Times, because Government is omnipowerful. It really is. Even within the framework of, you say, you have a censorship by a—a kind of censorship by CBS and a kind of censorship by NBC, and a kind of censorship by ABC, you still haven't interchanged and there is a lot of play at the joints by which you can get out, but you can't do it when you have Government censorship.

The FCC said they didn't want to have any more of these talks about the women and their sexual problems, and zing, they went off the air with not a whimper, not a whimper. As a matter of fact——

Mr. **Van Deerlin**. Are you referring to the housewife's talk shows?

Mr. **Fleishman**. The housewife's talk show, yes, Mr. Chairman, which was, as I read it, pretty innocuous in terms of a real problem. Women are concerned—women, apparently, are thinking about oral sex, as men are thinking about it also, and it is ridiculous, it seems to me, to say that what is in the air—when I say, "in the air," people are talking about it, reading about it, seeing it on the screen, and all around—that it should be blacked from radio which is, obviously, a very powerful medium.

Mr. **Waxman**. Isn't there a distinction made between a newspaper for which there can be an unlimited number, and a TV network, for which there is a definite scientific limit, at least at the present time, under the way we have the structure of the television industry?

Mr. **Fleishman**. That is one of the big problems, and I think that the best solution that we can come up with right now is to try and open that up as wide as possible.

If we had 20 stations, and the technology certainly would permit that in a particular area, that would be pretty rich. It would be a hell of a lot richer than the technology that we have—rather than what we have in most cities with regard to major newspapers.

So, that, theoretically, it is true. That is how the whole thing got started. In the beginning, there was limited access. There were a few channels open, and the notion was: "If we are going to give a monopoly to somebody, then the traditional answer to monopoly is Government controls."

So, we say, "We are going to give you a monopoly and then we are going to take back part of it by controlling what you say, what you do."

But, that works our badly in my judgment. I think that the answer—the better answer is to use the technology as much as possible to have as many channels open as possible, not permit the perpetuity. As I said, one 5-year term for a license and you are out, and then once that person has the license, that person should be as free as a newspaper.

Mr. **Waxman**. Putting those aside, let us say we have the technology to do it, and we also have the technology to have more than one major newspaper in the city of Los Angeles. Of course, it is the same kind of situation throughout the country, where there is one, maybe two, major newspapers. I am uncomfortable with Government censorship, but I am also uncomfortable with the censorship that you get from a newspaper publisher or the censorship that you can get from a network executive.

One might even argue that there is more of a chance for the public to influence Government, particularly in a democratic society where we elect our officials, than there is to ever influence the Chandlers, who own the Los Angeles Times exclusively. How would you respond to that?

Mr. FLEISHMAN. That is not the principle of the first amendment and I think that I side with the first amendment on this issue.

The first amendment starts with the premise that Government cannot be trusted, that Government has so much other power that if Government were the censor, too, that we could no longer call ourselves a free people.

Mr. WAXMAN. We have a whole line of civil rights cases where that distinction between governmental and private discrimination was broken down, because we realize it, while we prohibited Government from discrimination based on race, et cetera, we saw that private groups could also discriminate and the Court tied in some State action to that private discrimination to bring about its constitutionality.

Mr. FLEISHMAN. Yes.

Mr. WAXMAN. Would you find this to be a similar thing?

Mr. FLEISHMAN. No. That is different, because there is always, in my head—the first amendment stands on a different footing than the area where Government can take reasonable actions to bring about some desired public policy.

When the first amendment says, "no law," that means that government is precluded from trying to bring about something good by manipulating the media, by manipulating the news, by engaging in any kind of censorship.

It is just that the whole notion of the way we run as a people presupposes that government does not have its thumb on the scales; that we have the, as imperfect as it is, and it is imperfect to have censorship by Mr. Chandler, or by CBS—it is unhappy, but it is qualitatively different than censorship by government. This is really the point that I am making with regard to the broadcasting.

I think that it is unhappy that we have the censorship that we do have by the networks and the—well, it is really the networks that are doing it.

But, my studying this—I must say, I have changed my position.

When I started, I was in favor of the affirmative type of censorship but, really, hard thinking has brought me around to the position that the only way that the first amendment, really, is going to be honored is by keeping government out, which means that there is a lot of trash that we have to accept. That was always the premise of the first amendment.

The first amendment never assumed that only good things were going to be said. If only good things were going to be said, you wouldn't need a constitution for protection. The first amendment always knew that there were going to be lousy things, hateful things, offensive things, that were going to be coming out, and that is why we needed a constitution, to protect that also.

That is why I am concerned, when we hear, "Isn't this offensive or that offensive, and shouldn't government do something about it?"

I agree that there is a lot of offensive material around. I think that we ought to try and do something about it, but not by getting government into content in it. We can, as I say, try to use the monopoly laws, try to open up the channels so that there would be more diversity, but, in the end, we have to keep government out of the business.

Mr. **WAXMAN**. Is it your view that the first amendment is absolute and you would not distinguish between obscenity and other kinds of free speech?

Mr. **FLEISHMAN**. That would be my position, indeed. That is the position that Justice Douglas and Justice Black have taken consistently, and I am honored and pleased to aline myself with their position.

Mr. **VAN DEERLIN**. That leaves it, exclusively, to shouting "fire" in a crowded theater.

Mr. **FLEISHMAN**. Yes; and that is because it is brigaded with conduct and Justice Douglas, Black, and I have always said that that speech which is brigaded with conduct can be reached. It is just the speech which is so-called bad ideas that may not be reached.

Mr. **VAN DEERLIN**. You have been a very provocative witness, Mr. Fleishman. I thank you.

Mr. **FLEISHMAN**. Thank you.

Mr. **VAN DEERLIN**. You are going to leave me a little nervous every time I come to that line in "Casey at the Bat," you know, "kill them." It is the only recitation I know.

Our last two witnesses for today's session will be Ms. Ginny Vida and Dr. Newton Deiter of the National Gay Media Task Force.

Are we ready?

Dr. **DEITER**. One correction, Mr. Chairman. Ms. Vida is representing the National Gay Task Force. I am, however, representing the Gay Media Task Force. They are two separate organizations, but work closely together.

Thank you, Mr. Chairman.

Mr. **VAN DEERLIN**. Thank you, Dr. Deiter.

Ms. Vida.

STATEMENTS OF MS. GINNY VIDA, MEDIA DIRECTOR, NATIONAL GAY TASK FORCE, AND DR. NEWTON E. DEITER, GAY MEDIA TASK FORCE

Ms. **VIDA**. As I was thinking about what I might say here today, I was struck by a passage in E. L. Doctorow's "Ragtime."

The novel takes place in the early 1900's, a time when, as Doctorow puts it, "There were no Negroes. There were no immigrants."

The big news of the period was the murder of architect Stanford White by the husband of his mistress, Evelyn Nesbit, who quickly became the sex symbol of her generation and part of America's fantasy world of riches. Doctorow imagines a meeting between Nesbit and "Emma Goldman, the revolutionary," at which Goldman attempts to raise Nesbit's social consciousness.

"Goldman," Doctorow says—and I quote—"lashed her with her tongue. Apparently, there were Negroes. There were immigrants. And though the newspapers called the shooting the crime of the century, Goldman knew it was only 1906 and there were 94 years to go," unquote.

Seventy years have passed, and the families of America, who for half that time have been watching an unimaginably wonderful invention called television, have only in the past decade or so begun to be exposed, after dinner each evening, to Emma Goldman's truth. There are black Americans, people with the same capacity for laughter and tears as the rest of us. There were immigrants, and people with names like Arthur Fonzarelli and Gabriel Kotter and Shirley Feeny and Abraham Rodriquez are part of our Nation and part of our lives.

Seventy years have passed, and I, who left a career as a children's book editor to go public as media director for the National Gay Task Force, have come here to tell the distinguished members of this congressional subcommittee some more of the truth.

The truth is that there are gay people; millions of homosexual women and men in every city and town across America. The truth is that American families, yes, and American children, have the right to know that we exist.

Gay people are the only group in America which emerged from total media invisibility into total media abuse. Until just a couple of years ago, the only gay men to be found on network television were a breed of closet Stepin Fetchits, who traded on the hilarious potential of that great American hallucination, the "sissy." Then, the big breakthrough came, and gay men, labeled as such, were allowed to be not only comic sissies, but hysterical drunkards ridden with guilt, cowardly murderers who burst into tears on the witness stand, and rapers of teenage boys.

Until recently, on television, there definitely were no lesbians, and then the big breakthrough came. There were lesbians and it wasn't a joke. We were permitted to make our television debuts as the brutal rapists of pitiable young girls, as the heartless killers of dear, sweet ladies in an old-folks home.

Partly due to the efforts of organizations like the National Gay Task Force, things are looking up a bit. Dr. Newton Deiter, coordinator of the Gay Media Task Force, here in Los Angeles, can tell you a bit more about current and upcoming shows involving gay characters.

But, on programs directed to children and in the so-called family viewing hours, there are still no gay people. Why is that? Because the people at the networks tell each other, parents think that gay people are synonymous with violence and with sex.

No wonder, we answer, that parents think we are violent, considering the stuff they have been served up in adult viewing hours.

But, what about the sex, they ask each other in the corridors at the networks? Surely, if it is called homosexuality, how can it not be about sex?

Our answer, of course, is to ask the same question about heterosexuality. The truth is that pictures of two homosexuals, two women or two men, kissing each other tenderly on the lips are no more and no less about sex than what heterosexuals are seen doing every night in full view of everybody in family viewing time. The truth is that stories about two young women or men discovering love and regard for each other are not about explicit sex, and stories about lesbians or gay men coming out to their families are not about sex at all.

As for violence and sex, the National Gay Task Force takes no position on whether children are harmed by explicit depictions of these subjects.

We are opposed to violence, however, and we think that violence on television is a reflection of a male-dominated culture that squanders its energies in endless, violent attempts to prove its manhood.

We are not opposed to sex, but we believe that emphasis on sex, without love and caring, insofar as that is depicted on television, is the reflection of a heterosexual world which has just discovered that women are sexual beings, and is madly celebrating that awareness by imagining that women must now do what men in our culture have traditionally been programed to do: treat their partners, not as whole human beings, but as pieces of decor, sexual trophies to be used as false measures of personhood.

We, at the National Gay Task Force, believe that children have the right to learn the truth.

Gay women and men do care about children. I hope it doesn't surprise you to learn that many of us have children of our own, and all of us care about all the children in America who are taught to believe, and dare not confess, that each one of them is the only one in the world to have loving or sexual feelings for members of their own sex.

Gay people do care about morality. We think, for instance, that just as it was immoral to foster prejudice and discrimination by pretending to the children of America that there were no black people, no real people who were Jews, Mexicans, or Poles, it is immoral to foster prejudice and discrimination by pretending to the children of America that there are no real people who are gay. We think that just as it was immoral to provide no models for America's black children to look at on television and say, "Yes. That is just like me," it is immoral to provide no models for the children that all of us millions of gay women and men once were, children who sit by their sets with their families and hope for a sign that there is someone about whom they can say, "Yes. That is just like me."

We think it is not only immoral, but illegal, for the industry, mandated to serve the needs of all the public, to fail to serve our needs.

We are not asking the Congress to pass a law requiring the networks to present only positive depictions of gay people at all viewing hours. We believe that the Congress is wisely restrained by the Constitution from such narrow restrictions on speech.

We do ask that this committee, as part of its oversight functions, request the Federal Communications Commission to use all of its existing powers to require the television industry to offer fair and accurate images of all Americans, including this country's second largest minority, the gay population.

We understand that congressional hearings, such as this, are often used not only as forums for public interest groups like ours, but as a means of acquainting the public with the views of the committee's members.

If we have persuaded any of the members of this subcommittee of the rightness of our position, we also ask that you speak out today to the public, the FCC, and the television industry and tell them that you believe public ownership of the airwaves is not being protected for a significant number of the owners: gay citizens who pay their taxes and vote for Congress people like everybody else.

You may hesitate to speak out. There are lots of other voters who are frightened of us, but, as you think it over, I would like you to recall Emma Goldman and 1906. Like the founders of this Nation, she was a revolutionary, and most of the revolutionary ideas she fought for—the right of workers to unionize and strike, the right of all citizens to equal treatment, regardless of their place of origin or color of skin—are believed in today, I hope, by every one of us here in this hearing room. Even the revolutionary ideas she went to prison for—an end to the military draft, the right of heterosexuals to practice birth control—are parts of our legal system today.

Others of Goldman's ideas have not been fully accepted, like the right of women, as Doctorow has Goldman say it, to, quote, "love whom they want, develop their minds and their spirits, commit their lives to the spiritual adventure of life, and provide philosophical models for the betterment of mankind," unquote. But, I think we don't stamp ourselves as revolutionaries by saying that this idea is one that we at the National Gay Task Force believe in.

I am not Emma Goldman. I am not a revolutionary. I am simply a woman who respects the truth and tries to act with integrity, and I see no reason, at all, why my life is unsuitable for children.

But, I believe, with Emma Goldman, that there was no reason, at all, to wait 70 years, or a single moment, for blacks, or for Jewish, Italian, Mexican, Chinese, Polish, Puerto Rican immigrants, or for our only native American non-immigrants, to remain invisible as real people to other American families and children. I believe that neither I, nor any of my gay brothers and sisters of all ages, should be required to wait a single moment for fairness and visibility from this Nation's largest communications industry.

There is a great deal of hope today among the American people that integrity and loving regard for human needs can be put to work at the helm of Government. There is growing confidence that if that promise of integrity and humanity turns out to be a sham, we will be told about it by our communications media before it is too late.

We, at the National Gay Task Force, share the Nation's hope, but we cannot share its confidence. Not so long as the most influential of the communications media continues to defame us or deny we exist. Not so long as television fails to present us to America's families in all of our human variety. Not so long as the purveyors of mass entertainment refuse to realize that oftentimes, for children, as well as adults, there is nothing quite so entertaining as the truth.

Mr. Van Deerlin. Thank you, Ms. Vida.

I don't think anyone could hear that without being impressed by the considerable feeling and skill that went into preparing that statement.

STATEMENT OF DR. NEWTON E. DEITER

Dr. Deiter. Would you like me to proceed, Mr. Chairman?

Mr. Van Deerlin. Yes, will you please?

Dr. Deiter. Mr. Chairman and members of the committee, my name is Newton Deiter, and I am here to make a statement on behalf of the Gay Media Task Force, an organization which was established to work on behalf of fair, impartial, and balanced treatment of the lifestyles of gay men and lesbians presented on television.

We, on the Gay Media Task Force, recognized that the approximately 20 million gay women and men in the United States, because they represent a cross section of Americans, are as concerned with presentation of sex and violence on television as are other Americans. We are, at the same time, concerned about first amendment rights guaranteed to all people, including, but not limited to, the writers, producers, directors and creators of television programing.

Some years ago, the Honorable Newton J. Minnow, former Chairman of the Federal Communications Commission, referred to television as a vast wasteland. Since that time, we have observed that television has ceased, in large part, to serve the American public a diet of sugar-coated pap. It has shown a willingness to deal with pressing social issues, and to provide the American public with a more realistic picture of the society in which they live and the problems which plague that society.

At first, this willingness manifested itself in documentaries, primarily limited to the Sunday "Ghetto Hour" programing. Programs of this nature were later moved into television prime time. More and more, the creators of television drama and comedy have dealt with issues of social relevancy in their material, and have, in our view, enormously increased the three-dimensional view of American life thus presented. It is our view that this sort of presentation should and must continue.

We base this statement on our belief that television has the potential for being the most important educational medium the world has ever known. It has the capacity to bring into the home a host of ideas, view of the world which may lie outside the personal experience of its viewers. In doing so, it can provide its viewers with views of their fellow Americans as human beings, which they may not otherwise be able to obtain.

A farmer in Maine, for example, may better understand the problems of a ghetto dweller in the city, the problems faced by people who live in a world he has never seen, and will, in all likelihood, never have the chance to see; all through the common humanity which binds them both. In a simple, subliminal fashion, ideas of peace, friendship and acceptances of differences in people have been, and can continue to be propagated by television creators.

There are those, today, who feel that the pendulum has swung too far, and that television has become far too graphic in its presentation of social issues which it brings into American homes. In certain regrettable instances, this may be so. We hold, however, that these occasional lapses of good taste and judgment should not be permitted to cause blanket condemnation of socially relevant programing and its creators.

There are those who feel that divorce, childhood pregnancy, prostitution, the hell that is our penal system, denial of educational opportunity, racial and religious prejudice, the moral question of abortion, the rights of women to determine their own destiny, and the rights of gay men and women to lead happy and productive lives, are not fit subjects to be brought into the American home. We do not agree with this contention.

We believe that social evils are born of ignorance of conditions; that many of these problems and situations do, in fact, exist in American homes, and that the American public has the right to receive a fair and honest presentation of the society around them. We believe that those, who would terminate social relevancy in television programing, are engaging in the same sort of specious reasoning which once banned sex education from schools and the books of Hemingway and Salinger from library shelves to protect American children from the vivid realities of the life for which they were being prepared.

If is our belief that television has the obligation to inform and to educate, and that those who have been granted a license in the public interest have, in fact, an obligation to present sensitive and emotionally charged material on that medium.

We believe that, up until a year ago, the television industry, on a national, regional, and local level, was making dramatic efforts to live up to the responsibilities that the Communications Act requires of them.

A little more than a year ago, the creators of television programing discovered that an evening time line had been drawn. Earlier hours were reserved for family viewing, a period of time, during which certain kinds of issues were banned from the airwaves. Prior to the time line, and afterward, the rules remained unchanged, and sensitive or controversial subjects could still be explored. All this despite the fact that children come home between the hours of 3 and 4 in the afternoon and are free to watch the evening news shows, which frequently carry subliminal messages about excesses of human behavior which social psychologists have discovered, frequently, have more negative effects on children than dramatic presentations.

Children, these professionals have found, draw a distinction between the real as represented by news programs and make-believe as represented by written dramas and comedies, and the effects of news accounts of murders, such as the Manson slayings, of riots, of political corruption, coverups, and sex scandals, and of the grim effects of war, because they are real events, have more capacity to engender violence in children than do programs which they recognize as mere representations of life.

The institution of family hour viewing created a problem for networks and suppliers of products as well. The networks recognized that the Federal Communications Commission could exercise a large degree of moral persuasion by their granting or withholding licenses to network-owned and operated stations, and was able to persuade the networks to self-censor the products they allowed on their airwaves.

Insofar as the sellers of program material—studios, production companies, and individual producers—were concerned, they felt that they would now have to steer a safe course. They had to assure themselves that the product which was being sold for viewing before 9 p.m. would be safe and acceptable, instead of deciding whether a project had merit and was worth developing. Their thought processes had to change from, "Does the project have merit?" to "Does this project have merit before 9 p.m. or after 9 p.m.?"

Obviously, if they developed a product that was adult in its approach, they had 2 hours in which it could be presented. If, however, they developed a product that was safe for family hour, they then had the possibility of all three hours in which the product could be bought; therefore, the opportunities to sell safe products are greater due to more flexible programing scheduling.

The result was stultification. With few exceptions, producers became cautious in the presentation of their product to their buyers, the networks. Packagers of shows already on the air assigned to the 8 and 9 p.m. hour became far less adventuresome in the development of scripts for production. Conversation all over Hollywood revolved around, "What is acceptable for family viewing?"

No one really had the answers. Not the networks, writers, producers, no one. One network executive said, "Oh, it was simple to solve the problem. We just told the producers to deliver just what they delivered before, except pitch it lower for the whole family." I don't know if the members of this subcommittee know what that means, but the producer to whom the remark was addressed confessed utter confusion.

Insofar as gay men and women were concerned, with the notable exception of one segment of producer, Danny Arnold's "Barney Miller," appearing on ABC, no presentation of gay people, in any way, appeared during the 8 to 9 hour all last year. The networks indicate that they had no blanket prohibition against the portrayal of gay people, or situations involving gay people during these hours, and that they would evaluate each request for clearance of this subject matter on a case-by-case basis.

On the surface, a fair standard; in actuality, producers selling product to all three networks have told me that before 9 p.m., the subject of homosexuality or lesbianism in any way, shape, or form is taboo. Since their livelihood depends on delivering to the networks what they perceive the networks want, in effect, gay people disapperd from television during that hour, and from other time slots, as well. we believe this to be in direct contradiction to the obligation which television has to inform and educate its viewers. For, the simpe fact is that Americans of all ages, in all walks of life, come into contact with gay women and men every day of ther lives.

Gay people teach in schools, work in offices, are manual laborers, and work in factories. Gay people are, in fact, born into families and participate in family life. Just as with Jews, blacks, Chicanos, and native Americans, prejudice practiced against gay people arises from ignorance of the common humanity which is shared with the other 180 million people who live in these United States.

We are very troubled by the fact that the existence of more than 20 million people, most of whom lead lives which are as productive and constructive as those of other Americans, has been eliminted from one-third of the hours available for network programing. This elimination, linked as it is with the entire matter of a blanket prohibition against sex and violence in the early evening, seems to us akin to using an atomic bomb to destroy a fly. It will certainly do the job, but the cost appears to be out of line with the desired outcome.

There is, built into the American free enterprise system, and in particular, television, a simple mechanism for showing one's displeasure with a product or service. If one is displeased, one ceases to buy or to pagronize; and, if, in fact, the overwhelming majority of the American viewing public wants bland programing between 8 and 9 p.m., it will very quickly make the networks aware of the fact by not watching programing that they believe has an excessive display of violence, is blatantly sexually oriented, or is otherwise offensive.

Self-policing and the intelligent use of the airwaves is a responsibility encumbent upon the networks, and certainly, by law, upon the owners and operators of individual television stations.

These stations that persist in presenting programing not in the public interest, or offensive in subject matter or content, to a majority of their audiences, would soon find their licenses under assault from groups within their own communities. Sponsors who buy time in programing segments would find, we believe, that if this programing were offensive, they would hear from the consumers of their products, and would quickly remove commercials from these programs. Since networks are dependent on time sales for their income, the economic pressure would quickly be felt, and programing changes would be made.

We cannot believe that network personnel are unaware of this. They use these same tools to cancel programs which are not accepted by the public, and if they are able to do it very quickly, these tools can be used, also, to determine when viewers find programing content to be distasteful and unacceptable. To exclude subject matter by inaction and misdirection denies the creators of television programing their right to explore, in the public interest, all facets of American society in the last quarter of the 20th century.

As gay people, we do not ask that we be the recipient of special programing, or that our concerns be given special handling. Just the opposite. We ask, and in fact, insist upon, fair presentation of our lives, lifestyle, existence as Americans, in the same manner as that of any other minority or subcultural group.

I thank the subcommittee for its attention and am ready to respond to any questions.

Mr. VAN DEERLIN. Now, was it your organization, or was it the National Gay Task Force, that became involved in the complaint over the "Marcus Welby" program?

Dr. DEITER. Both organizations, Mr. Chairman.

Mr. VAN DEERLIN. Can you relate to us what was unfolded there?

Dr. DEITER. Yes. Initially, there was an episode presented on the "Marcus Welby" show called "The Other Martin Loring (?)." This was approximately 4 years ago.

In that episode, being gay was presented as a sickness, and a person who was gay, or had tendencies in this direction, was diagnosed by Dr. Welby as a sick person who certainly should seek the help of competent psychiatrists who could reorient him to a heterosexual mode of life.

We are very offended by that. We communicated with the network, and, at their request, dialog was established with the producer. We were assured that this would not happen again; however, in the following year, David Victor struck again, and we were presented with an episode on "Marcus Welby" called "The Outrage," wherein, child molestation and homosexuality, or a gay lifestyle, were equated as one and the same.

At that point, indignation across a broad spectrum of the gay community throughout the country just was very high. The National Gay Task Force——

Mr. **Van Deerlin**. Did the program go on the air?

Dr. **Deiter**. Yes; it did. However, it didn't sit that way. We did not just express indignation. The National Gay Task Force orchestrated a campaign of protest, and I would like to ask Ms. Vida to take over on the task force's part of it, and then, I would like to show the subcommittee a bottom line that we found out from internal sources of ABC.

Ginny?

Ms. **Vida**. Well, the National Gay Task Force, at that time, then, urged gay groups around the country—there are 1,100 lesbian and gay groups around the country—we urged them to get in touch with their local television stations that would be carrying that program, which we knew to be offensive. Many of the stations did cancel the program, and a number of the sponsors were contacted, also, and a number of them dropped out. ABC, then, had to lower its advertising rates to fill up the time. So, that was the "Marcus Welby" story.

Dr. **Deiter**. We found out, through internal sources, that rather than just lowering the rates for their time, that, in fact, that particular episode aired in prime time with no paid commercials. Every paid commercial was cancelled. The only commercials that ran were public service announcements or make goods.

As a result of what happened in this instance, we recognized that an awful lot of what was happening out of ignorance, and if we, in fact, were to help to alleviate this situation, we had to provide input to the networks on a corporate level and to production people here.

The National Gay Task Force provides this input on a national level, on a corporate level in New York, and our organization provides production consultative services and assistance in Los Angeles.

We have found that, since we have set up this arrangement, we have been far more pleased with the presentation of, certainly, gay men on television. We are still very, very troubled with the lack of visibility of a lesbian lifestyle on television.

Ms. **Vida**. There has only been one positive portrayal of a lesbian ever——

Dr. **Deiter**. Five years ago.

Ms. **Vida** [continuing]. On television. That was on CBS 5 years ago.

Mr. **Van Deerlin**: What was the program?

Ms. **Vida**. It was on "Medical Center." It was a portrayal of a lesbian psychiatrist. All of the lesbians, since then, have been portrayed as murderers, people who take old ladies out and strangle them with piano wire; really far-out and very offensive portrayals, all of them very negative.

Dr. **Deiter**. Very much so. As a matter of fact, I just finished writing a peice for "Television Quarterly" where I explore this question of presentation of image of gay people on television.

We are seeing some changes in the current season. The most important change that we have seen, I would say, in the past year, is that when scripts have been sent to the task force, and simultaneously to the networks, and we have sat down later with the producers to discuss areas of difference, we have noted that the areas that the networks have objected to was dealing with gay people in stereotypical ways, have coincided exactly with the presentations we have made to the producers. It shows us that, at least, there is a beginning of a heightened sensitivity to not dealing with us in stereotypic fashion.

Mr. VAN DEERLIN. Mr. Waxman.

Mr. WAXMAN. I have no questions, but I did want to comment that I am very impressedy by your testimony. I think that when we have rules that talk about the FCC making sure that our licensees, both television and radio licensees, cannot defame minority groups, that that ought to include gays and the FCC should have that obligation to be sure that the networks live up to the standard that both of you have outlined for us today. Thank you for your testimony.

Dr. DEITER. Mr. Waxman, I can tell you that if sexual orientation was included in that area of defamatory conduct on the part of licensees, that would go a long way toward solving the problems that we have to deal with.

Mr. WAXMAN. Is it necessary to include the words "in the statute," as you see it?

Dr. DEITER. At this point, our experience, and the experience of other gay groups around the country that we have swapped information with, leads us to be certain that licensees say, "Well, we will deal with you, but it is because we want to, not because we have to."

I have heard this, many times, from stations here in the Los Angeles area, that what they are doing is largesse. They have no requirements due it, but we will show you that our hearts are in the right place, and we will, at least, listen to you.

Mr. WAXMAN. Well, did I agree with you that if it is necessary for us to include that in the statute, that I think it ought to be incumbent upon us to do it?

As a member of the subcommittee, I will look into it, and, if necessary, I will offer the change of the law to be sure that we put that language in.

Ms. VIDA. Thank you.

Dr. DEITER. Thank you.

Mr. VAN DEERLIN. I am grateful to both of you for being with us.

That winds up the hearing for today.

I would like to make note of the fact that when we resume at 9:30 tomorrow morning, we will be gathered in room 3123, which, I assume, is on the third floor.

[Whereupon, at 5:03 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., Wednesday, August 18, 1976.]

SEX AND VIOLENCE ON TV

TUESDAY, AUGUST 18, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Los Angeles, Calif.

The subcommittee met at 9:30 a.m., pursuant to notice in, room 8544, Los Angeles Federal Building, Hon. Lionel Van Deerlin (chairman) presiding.

Mr. VAN DEERLIN. The subcommittee will come to order.

Good morning. We will come to order for the second of our 2-day hearings.

We are privileged this morning to hear from a man whose name is closely identified with some of the regulatory problems that we are looking into in these 2 days' oversight hearings. He is Norman Lear, the president of Tandem Productions; producer of a series of hits that are so much a part of the America culture today that he probably gets tired of hearing the names rattled off.

Surely "All in the Family" and "Mary Hartman, Mary Hartman" are titles that are a part of the conversation daily across the country.

Mr. Lear, we would be privileged to hear from you as our leadoff witness today. Just bring your coffee up to the witness table.

I would be curious to know at the outset——

STATEMENT OF NORMAN LEAR, PRESIDENT, TANDEM PRODUCTIONS

Mr. LEAR. I can't tell you what is going to happen to Mary Hartman, sir.

Mr. VAN DEERLIN. No; I am just wondering about the repetitiveness in the title. What was the source of that?

Mr. LEAR. I can't remember the youngster's name, but—it was Marty Allen—but when I was a youngster, I remember the mother of a friend, Marty Allen, yelling to him from a third-floor window, "Marty Allen, Marty Allen"; dinner was ready, she needed something in the store. She always repeated his name, and through the years mothers have done that, so that is what Mary Hartman's mother says.

Mr. VAN DEERLIN. Well, we want to welcome you to the "Henry Waxman, Henry Waxman Show."

Mr. WAXMAN. Thank you, thank you. I can use a comedy writer.

Mr. LEAR. I am happy, I should say, to appear before this committee, and in my opinion, the biggest current problem with television in our country is that the average viewer is watching 6 hours of it per day.

The reason for this has nothing directly to do with television itself, so what I am about to say may appear to be of less than primary concern to this committee.

However, I find it impossible to accept your invitation to address Members of the Congress without drawing the following matter to your attention.

Americans are watching an average of 6 hours of television per day because they have turned inward. They have turned inward because their leadership has not seen the need to inspire them to turn outward. Americans have lost touch with one another. Often, they live in fear of their neighbors. They have lost the sense that they matter as individuals. I think that they no longer believe that their voices will be heard, or that their votes will count.

When Americans began to lose their individual sense of meaning in the world at large, they started to turn inward, and there, in the security and isolation of their homes, sat the television set. Here, they could observe the passing images of life, because they no longer believed in their ability to participate meaningfully in the reality of life.

It is my fervent hope that the next 4 or 8 years of leadership in this country, from the Oval Office to the Congress, will serve to inspire Americans to an understanding that they do matter, and that life for them as individuals does have meaning.

I believe that without ever talking about television itself, people can be influenced away from 6 hours of TV viewing per day, they can be inspired to reach out to their neighbors, to reach out to their community, to participate in life, instead of watching it dance by on a 21-inch tube.

I would make the need to inspire people to become involved in their lives, or reinvolved in their lives, a top priority of this Nation's business.

Now, as to the content of television, I think, gentlemen, you will find very few members of the creative community, few actors, writers, directors, or producers, who will not agree that gratuitous sex and violence is to be condemned at any hour. There are very few writers, for example, who would not rather write an interesting scene between a father and son, or a husband and wife, two brothers, two sisters; interactions between people, as opposed to car chases, shootouts, and the like.

No doubt, writers in our community have written those car chases and shootouts, but the question we must ask ourselves is, why?

The answer to me is simple. Car chases, and shootouts are nothing more than product. Product in the marketplace moves according to the law of supply and demand. What writers have supplied, they have supplied to fulfill the demand. Where did the demand come from? Well, in the land of television, there have never been more than three major markets. And it has always been those markets that have articulated the demand to the creative community.

The networks and the NAB can say what they will. They can try to draw the pious, insincere smokescreen called family hour across the vision of this committee, and the American viewer, but the simple fact is that if networks had not wished gratuitous violence on the airwaves they control, it would not have been there.

We read today of the giant advertising agencies who now condemn TV violence. They are the same agencies which paid million ands millions of dollars for years and years of television violence before it became popular to condemn it.

My companies did not produce any of the shows which in former years contained the violence that is no longer welcome in the so-called family hour. But I know that the men and women who made those shows, who wrote them and then spent years as producers or story editors, to insure their dramatic unity, performed their services as suppliers, only.

As for my companies' productions, I have been described as holding the view that sex and violence are OK on TV, as long as they are funny. That is not my position.

At Tandem and T.A.T., we are deeply concerned that our television shows reflect a high standard of originality, of taste and of social awareness.

We are not unique in that attitude. Many other producers in the Hollywood community are as involved as we are in the struggle to produce quality television. Why, then, are the great majority of television's creators lined up against a family hour, which purports to seek higher quality in television by the reduction of gratuitous sex and violence?

Well, first of all, as I indicated, family hour is nothing more than a smokescreen and a public relations ploy. If the networks and the National Association of Broadcasters had been sincere about their desire to clean up the airwaves, why didn't they call a meeting with the creative community to discuss the problem? Network executives fly to Puerto Rico, the Bahamas, Hawaii, Las Vegas, to conduct their program schedule meetings, and other company business. Why, through all the years, as public protest began to build regarding TV violence, did not one network executive ask for a meeting in Los Angeles to talk the matter over with the writers, directors, and producers in our community?

The reason they never did so is really quite simple. Each network has two departments which deal with the creative community. The programing department is responsible for ratings, and ratings are responsible for network income; dollars.

The program practices department is responsible for the content of television on the network. Because violent shows paid off in previous years, the programing department coaxed more action, a euphemism for violence, out of the producers, while the program practices department told the producers to hold the violence down.

It is because of this schizophrenia at each of the networks, the opposing signals from the two departments, which result in a subtle and unacknowledged conflict, that the subject of gratuitous sex and/or violence on television could never be discussed in an open meeting in an honest and sincere manner.

And so, to throw a bone to a concerned public, and the Congress, the networks acceded to the intrusive suggestions of the FCC, in defiance of the first amendment, as claimed by the creative television community in its pending lawsuit against the networks, the FCC and the NAB, and created what has come to be known as family hour.

Has family hour resulted in additional censorship? Yes, it has. Just this week on "The Jeffersons," a black family show, we are having a little rondelet with the program practices department over the fact that George Jefferson asks a man to leave his home by saying: "Get out of here, sucker."

The word "sucker" is current black idiomatic street talk. P. T. Barnum told us in another generation that a sucker was born every minute.

A dictionary of American slang tells us that the word derives from a fish which takes the bait and gets hooked. And that is exactly what it means in contemporary black street talk, too.

Yet a young CBS executive in the program practices department tells us that we cannot use the word, because he fears that too many viewers may take the word to mean something that is not intended.

Does this young man really believe that a large segment of the audience would mistake the meaning of the word? Privately, he tells us "No." Personally, he tells us he has no real problem with the word, but he says he is concerned about people out there. I don't think it is the people out there that he is really concerned about. He is standing in a rehearsal hall, 4 miles removed from his immediate superior, and he is trying to guess what that superior will think. When that superior is aware of the problem, he is in an interesting predicament, too. He must wonder what his immediate superior would think of the word "sucker," and that man is sitting in a tall, black monolith, 3,000 miles and 36 stories removed from the situation.

What we have, gentlemen, is a long line of people, each trying to guess the other person's reaction, and because so many minds and sensitivities are involved, because well-paid jobs are involved, there is a tremendous pressure at the end of that line where the low-ranking member of the program practices department is interfacing with the individual producer. Both are in terrible pain.

This is censorship. I have illustrated it with a story about one word. It is occurring every day with ideas, too. Story lines and themes are sometimes as taboo as the single word. Censorship is enervating, counterproductive to the creative process and a deceit in terms of what it purports to accomplish for the American viewer, when it is called the family hour.

TV Guide conducted a survey about family hour recently. While the resulting article did not feature the following statistic, it was, to me, the most stunning statistic to turn up in all of their research. Seventy-eight percent of the viewers polled said that they didn't want to be told what they and their families could see on television. They wished to determine that for themselves and would exercise their own, free will at the channel selector.

To this citizen, that is the American way, or one American way. Another would be for all interested parties, networks, the NAB, the public, the creative community, to search for solutions in an open forum.

One of the least American solutions is family hour, born behind closed doors, pretending to be something it isn't, leaving confusion, obfuscation, and censorship in its wake.

Thank you.

Mr. VAN DEERLIN. Thank you, Mr. Lear.

I suppose the most arresting part of your testimony is the charge you have made about the inability or refusal of the bigwigs to talk to the people who are producing about the product they are producing, rather than just moving ahead with an artificial order, like the family hour, to deal with the problem.

Are we to assume that this is literally the way it was done? Was there no contact by the networks with a man like yourself, on whom they are leaning for so much of their new type programing?

Mr. **Lear**. To my knowledge, sir, no network, at any time, ever called the creative community together, to sit down and say something as simple as, we are hearing a lot of concern about gratuitous sex, gratuitous violence; we are hearing it from the public, we are feeling some presure from the Congress through the FCC, and we should discuss how we can—what we can do about it.

And the reason I have suggested to you that they did not have such an open meeting is that, the best illustration for this is a gesture Milton Berle used to do years ago. He would say something funny, and the audience would start laughing and applauding, and modestly he would hold up one hand in a "stop" position, and then below, with that hand, he would go like this, "come on, give me some more," with the other. You may remember that gesture.

This is program practices, and this is programing. Program practices says, "enough violence." Programing says—two people are talking in one room for 8 minutes. The writer is saying, the producer is saying, but read what they are saying to each other. It is a great scene. Programing is saying, "But there is no action. Where is the action?"

Mr. **Van Deerlin**. Talking heads.

Mr. **Lear**. The writer who has to—yes. The writer who has to get on to the next script to support his family and can only aruge just so long has, in the past, gone back and said, well, what the hell; I will take these two actors, take them out of the room, put them in a car, let them have the same conversation, the same dialog, in a car. Let the car go down the highway, have the man driving so agitated by the conversation that he is driving less well, and an oncoming car is forced off the side of the road and will go over in flames. And we will see, and he writes it as fast as he can; two bodies fall out in flames, and the network executive has the action in quotes that he was looking for.

Now, gratuitous sex has turned up the same way. Two people are involved in a story and the network is looking for action, and the writer in the fifth hour of painful argument over this says, "What the hell"; goes home and makes one character a lesbian, or another one a homosexual, or a streetwalker suddenly walks into the scene, because that passes often for action, too; a little gratuitous sex.

Mr. **Van Deerlin**. What about the jump in that program, "All in the Family," from Saturday night to Monday or Tuesday, or whatever it was moved to, when it was taken out of the early family hour viewing? Was that done with any advance consultation, or was that a decision made in New York, in which you were not involved by invitation, or otherwise?

Mr. **Lear**. You know, this is part of the lawsuit that has not been concluded, and we are waiting for Judge Ferguson's decision. I am not sure what I should or should not be discussing in that regard, but we have, our company personally, has claimed that "All in the Family," which had been the No. 1 show in the Nation at 8 p.m. on Saturday night for 4 years, was moved strictly because the network had to make some family hour concession to the other two networks which were moving violent shows, or so-called violent shows, out of that same family hour time, and CBS had to make some concession, too, and so it threw "All in the Family" out of the family hour and, in our opinion, stigmatizing it as a show not fit for all family viewing, when America, if the channel selector may be considered a voting instrument, when for 4 years prior to that had voted "All in the Family" its No. 1 family show.

Mr. VAN DEERLIN: You have already answered one question, which is that you do not exercise exclusive control, as a creator of the program, over its content.

At what point do you start yielding that authority? Does it come to story line conferences in advance, or does it get to the script stage? At what point do these watchful young men from the networks begin to look over your shoulder?

Mr. LEAR. Well, our problem, sir, isn't so much that we yield, as that we spend great amounts of time and energy not of yielding

Grown men stand around talking about a word that I have just mentioned. I think we logged, at one point, some 16 hours spent talking whether Archie Bunker should be allowed to diaper his first-born grandson on one television show last season.

We have won those arguments simply because we have elected to go out of business before we would lose. The ones that we have lost, we have lost because good minds in Program Practices, and there are good minds there, have convinced us we were wrong about something.

Whenever we have had these honest and open one-to-one discussions, there are times when Program Practices has convinced us we were wrong about something, or programing, or anybody. You know, in production, with an open mind, one listens to all people, and often, enough of the time, anyway, Program Practices has had a thought and has helped us make it better.

That was in the days, however, when an individual was speaking for himself, representing what he thought was right.

Now, he feels he is being second-guessed by all of his superiors, as I indicated in my written testimony, all the way back to New York and up to floors 32, 34, 36, and 38, where the rest of the network executives live, and it really goes, in some instances, that far and that high.

Mr. VAN DEERLIN. One witness yesterday suggested that a man who is employed in this capacity, if he didn't make challenges often enough, might be soon thought to be surplus appendage in the organization, and so he has got to find something to raise hell about.

Do you ever throw in gratuitous bits that you know he is going to get, just to keep him busy?

Mr. LEAR. No; there is just too much work to be done to play those games. I know it has been said that people—I strongly suspect that it is kind of a cynical answer to a question. That isn't often actually practiced. It just takes too much time and energy to fool around that way.

Mr. VAN DEERLIN. Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. Lear, one thing that impressed me from the hearings yesterday, and your comments this morning, is the evident lack of communication between the networks and the production/creative community in

Hollywood, and I at first was surprised at that, thinking that you are all in the same business, and you are all trying to see that the television shows are on the air and successful, for whatever criteria you might have, which may be differing criteria for success, but I really am not so surprised when I realize that we can't get the networks here, either, to talk to us about the whole problems of violence on television.

They have told us that this lawsuit is pending, and that lawyers advised them that that might be a problem to talk to us, although we are an independent branch of government, and there can always be some lawsuit pending somewhere, if they wanted to use that as an excuse.

Do you see any, out of the lawsuit, and these hearings, any hope that the networks and the creative community will start some dialog together, some discussions, so that you can have a meeting of the minds, if one is possible?

It is sort of ironic that you are all in the profession of communications, but yet you have such difficulty communicating with each other.

Mr. LEAR. Well, I have great hopes that we will be able to communicate better in the future, as a result of everything that has happened, and the reason, Congressman, that the networks are not present for these hearings, I feel, is that they would be forced to defend what each individual in his heart knows to be a deceit, a smokescreen, a public relations ploy, and it is very hard for an individual to defend that.

It is a little easier when they are collected in one of those giant buildings, and by committee, exercise something called family hour, but for a man to sit here and try to defend it cannot be too simple, knowing that it is a smokescreen, only.

Mr. WAXMAN. Well, let me express my feelings to you. I just think we have a tremendous gap in our information about the problems of violence on television without hearing from the networks, and as far as I am concerned, we are going to hear from them; if not today, some time at a hearing in Washington, or in New York, or I am willing to travel to wherever they are willing to sit down and talk to us, and if they are not willing to do it, as far as I am concerned, I am going to urge upon the chairman that we subpena them.

I just think we have to have them cooperate with us, and maybe as a result of all this, they will start cooperating with you, and we can start talking about how to take care of the problems that everybody seems to be mutually concerned about.

But I want to ask you some questions.

We had testimony yesterday from Grant Tinker and Allan Burns, and they expressed the feeling that before the family TV viewing business came about, they had censorship from the Programing Practices people, and they were not offended by that.

What are your views about the censorship from the networks, from the Programing Practices group, or whatever that agency would be that would direct some changes in programs. Did you find that acceptable, one, as a practical matter in your own experience; and, two, do you find it acceptable as someone who is concerned about civil liberties.

Mr. LEAR. Well, I think a businessman is entitled to run a business his way. The network is the network executive's business, and they ran it their way. They did have some control of programing.

But they met us, as I indicated earlier, head on, one to one. If I could convince them that I was right, and sometimes I perhaps convinced them, without convincing them; that is, they weren't intellectually convinced, but emotionally, they felt, well, let's go along, rather than have a little more difficulty, and then the American viewer's reaction convinced them. This happened quite often, especially at the beginning, for example, of "All in the Family," when we did handle some themes that had not before been handled in a situation comedy.

Once the network learned that the American viewer was not only not offended by the theme, but was interested in it, and once the network executives saw that no States ceceded from the Union because they had broadcast the program, it was easier to convince them that things they thought before would be too controversial were OK.

And also, they began to learn that controversy, in and of itself, was not necessarily a bad thing. Americans love to like things. They also love to express themselves when they are not in agreement, and that kind of discourse is extremely healthy, and they learn that, too.

Mr. WAXMAN. Well, this took place in the early days of "All in the Family," and you were able to convince them to take the chance on some of the shows that they otherwise might be concerned about, because of the controversy?

Mr. LEAR. Yes, and so it was a learning process, together. I mean, I learned; they learned, and I wasn't always right. They convinced me sometimes. You know, they showed me often, because I had to answer questions, I found, or they showed me, a better way to do something.

That is open, honest, everyday colloquy and disagreements that results in solving the problems.

Mr. WAXMAN. Mr. Lear, you were describing to us the situation with the exchange between a Program Practices person in the days prior to family viewing, and the helpfulness of that to both of you, in terms of exchanging ideas. Are you, in effect, saying it was helpful to both of you in developing the programs and deciding what would be appropriate to show on the air?

Mr. LEAR. Mr. Waxman, the best way I can answer that is to say that I have never found communication and discussion with anybody less than helpful. It is always helpful.

Mr. WAXMAN. But isn't the Program Practices person a censor? Isn't he a censor in there, to make sure that some things will be on the air and some things won't be on the air?

Mr. LEAR. It is one thing, sir, to have—yes, he is. It is one thing to have somebody there in former years saying he did not agree or disagreed with this particular concept or this particular word, or whatever, and he was representing the network, which was, after all, to broadcast it.

It is quite another thing when the Government, through the FCC, in clandestine, or at least this is the thrust of the suit we are bringing against those groups, meet behind closed doors to answer a problem in a way and with a phrase, family hour, that they can in no way articulate. They cannot tell anybody what it is. It is like smoke that creeps under doors and through transoms and infects rooms. You can't breathe in it.

The Program Practices individual that is working on the set with the actors and the producer is working with this amorphous phrase in his head. He doesn't know what it means. He cannot tell you what it means.

All it means to him is, gee, I had better not let anything happen here that somebody above me is going to find offensive or in contradiction to the family hour.

Now, that individual above him has no guideline. Family hour, for him, is simply as amorphous as it is for the first individual, and now you pyramid that all the way up to the line, and what you have is a growing, a cancer, on the creative process that has no definition, and therefore, there is no way to attack it.

I can't say to that individual who is telling me, well, but in the family hour, there is going to be a "knee jerk" recreation to this family hour, there is going to be a "knee jerk" reaction to this in the Midwest, and they will even tell you the section of the country where the "knee jerk" reaction is going to come.

Mr. WAXMAN. But they all go to sleep at 8 o'clock in the Midwest, as I understand it.

Mr. LEAR. Well, they have to, because they—yes, that is right, because family hour is over then. It starts at 7 in the Midwest. And what about all those poor children in the Midwest who are thrown to the lions? There is no family hour to protect them in the Midwest. Where is the sincerity in all of the family hour concept when one-third of the Nation is berefit of family hour, if it is a good thing?

Mr. WAXMAN. But I am interested in your distinctions about the family hour censorship, as compared to the prefamily hour censorship. Is it a question of degree, or is it a question of qualitative difference?

Mr. LEAR. It is a question of degree, it is a question of atmosphere, and it is a question of this amorphous notion that is controlling the content of an entire medium.

How does a writer and this is one of the areas where it is most, pervasive; a writer sitting alone, thinking about a new show. There is something called family hour. There are only 3 hours of prime time television viewing, 8 to 11. He wants his show to have the best chance to make the schedule for whatever network he happens to be writing it for, and he knows that if he doesn't write something that will offend no one, because that is part of what family hour is all about; we just won't offend parents, children, and so forth, and of course, as Justice Potter Stewart said, "I don't know it, but I will know it when I see it." That is true for each of us, as individuals. There are 200 million Americans who will know it when they see it, but they are telling us that they will know it for 200 million Americans. That is what is happening, in effect, when they see it.

I lost myself. I went on a tangent, so I don't know if I answered your question.

Mr. WAXMAN. It was an excellent answer, but I want to ask you I think the basic question: Who should control programing content?

Mr. LEAR. In the final analysis, the American public tells us again and again and again it wishes to have the responsibility; in all ways, it tells us it wishes to have the responsibility for television viewing in its own home. They wish to control it themselves.

As responsible members of the television community, we all have a responsibility to quality, to curb excesses; whether it is sex, violence, and I would add commercials, we all have a responsibility to curb excesses.

But that would be true, sir, of the automotive industry. Excess weight in cares, excess gas usage. It would be true in any industry, and it is true in ours, of course.

Mr. **Waxman**. The networks often say that they show on television what people want, and American people get to see what they want, because these are the programs that have high ratings.

Are the American people getting to see what they want, and are they accurate in their description of the way the process sorts things out?

Mr. **Lear**. We have tended in leadership circles in American always to denigrate the public. In my business, and perhaps in politics, too, the American, the average American was, at one time, supposed to have had no more than a 13-year-old mentality. I think that is a fraud and deceit, too.

If three networks serve up violence, and a lot of it across the spectrum, and the American viewer, the average American viewer, who, in this economy and at this time in our Nation's history is struggling simply to get from Monday through Friday to pay mortgage payments, to send children to college, to hold onto jobs they may be afraid of losing, that individual, seeking a little surcease and a little rest and relaxation, turns on a television set because it is the closest thing at hand, if violence is there, he will watch violence.

It is not to denigrate him. That is what is available to him. To say that he has done that for 4 years, when there wasn't an acceptable alternative, and thereby conclude, well, that is all he wants is, again, false and a deceit, and really not a true picture of our country and the average citizen.

Mr. **Waxman**. Thank you very much.

Mr. **Van Deerlin**. Mr. Lear, you have indicated that there was little or no contact with you from your network executives, or anyone else, preceding the introduction of the family hour. Considering the advance publicity that it had, and that it was well known in the trade that something like this was coming, were you ever moved to take the initiative and call anybody else about it, getting in touch with the people you deal with—the networks—or was yours a sort of passive role, waiting for the orders to come down?

Mr. **Lear**. Well, making as many shows as we do, we were in constant interaction with the networks over these subjects. Did I take a leadership position and call the networks and say let's discuss this; no, I did not, and perhaps should have. You know, perhaps any of us should have done that.

But the pressure was coming from the public to the network. The network, each of the networks where the people who were involved in first deflecting that concern of the public's, then trying to answer it, then trying to deflect the Government's concern when it heard from the public in great numbers, and I mean, they were the ones actively involved in handling it, but unfortunately, they chose to handle it in a public relations way, and not in getting to the root of the problem.

Mr. **Waxman**. Mr. Chairman, will you yield?

Mr. **Van Deerlin**. Sure.

Mr. **Waxman**. We had some interesting testimony yesterday on some possible alternatives to the family hour, in terms of controlling violence, and I expect today we will some others, but what struck me in hearing really some ingenious ideas; we had Geoff Cowan, whom you may or may not know, from UCLA, talk about technological innovations that might be used on the television set; things that I hadn't heard other people discussing.

What struck me was that when these kinds of things were discussed and alternatives were evaluated, how there was no exchange of ideas possible, from you or from anyone else, when the network executives and the Chairman of the FCC met behind closed doors and reacted to evidently threats from Congress and public pressure.

I met with Mr. Wiley, and I told him he shouldn't take Congressmen so seriously, because we have a first amendment that protects all the people in this country from even the majority of the people, if they are wrong, on questions of free speech, and certainly from Congressmen who might be trying to make political points back home.

But I wanted to say that, because I assume you were not invited to those meetings when the network executives and the Chairman of the FCC discussed the family concept and discussed how they would react to the public pressure against violence?

Mr. **Lear**. No, you can bet I wasn't.

Mr. **Van Deerlin**. Any questions by counsel?

Well, thank you, Mr. Lear.

Mr. **Lear**. Mr. Van Deerling, may I ask just one question?

Mr. **Van Deerlin**. Well, I have a feeling that I am leaving myself open, but yes.

Mr. **Lear**. Of all of you; because I have felt so keenly about this for some little while.

As I indicated in my prepared testimony, the testimony, the biggest problem with television is, people are watching almost 6 hours of it per day. That is more than a third of one's waking time.

I don't think that the average viewer is watching that amount of television, because nature made him so that he would turn—so that he needed television for that amount of time.

I see a problem in society that is making the average man feel he doesn't belong, he doesn't matter. I hear it around me all the time. You, I know, hear this.

The 18 year olds got the vote, and they are really not using it. We are all concerned about what we are reading now about education and the falling grades throughout the country. People, more and more, are feeling they don't matter as individuals, and they cannot effect anything in our society. People who feel that way, it would seem to me, would turn inward. They would stay in their womb-like bedrooms, living rooms; wherever that television set happens to be, if they were sure, or if they felt deeply that nothing outside mattered; that they couldn't control any of that, and there the television set would mesmerize them.

I don't think it is that American's fault that this is happening to him. This was a question, and I intend it to be a question: Don't you feel that there is some chance that the new President, whoever he might be, and that the Congress, not with 6 hours of television being wrong in mind, but with the notion that it is time to reemphasize to the individual that he does matter; that his vote matters, that he can help in his own community, that he can interact with his family and with his neighbors in ways that are helpful to his community; that there can be more inspiration, through Congress and through the Presidency, and everywhere in leadership positions, simply to reacquiant people with the joys of living and the fact that they can participate, and that they matter.

And if there is any success at that, I think one of the first things that would happen is, we would start to see a decline in the amount of time that people are spending watching that tube.

And I would like to ask you if you don't think, (a), that there is a problem there; and (b), that the solution rests with the level and quality, inspirational quality, of leadership in the Congress and in that Oval Office?

Mr. VAN DEERLIN. Well, let us divide the answer. I will readily concede that there is the problem you describe, and Mr. Waxman will tell you what is being done to meet it.

Mr. WAXMAN. Well, let me just comment. That is not really the purpose of the hearing, but I think you raised a very important point.

Maybe the networks can say cynically that people are getting what they want, and others can say about those of us in our profession are getting what they deserve. It is too quick an answer.

I feel, maybe because of the Bicentennial celebration, but I feel that this country is searching around for new purposes and new meanings, and we have gone through a terrible trauma; Vietnam and Watergate, and a complete loss of respect for those who are to be our leaders, and as individuals and as models for the rest of the country to follow.

But I think, at least I am hopeful, that there is a new kind of spirit that is moving around in this country; that people are realizing that this is a good country, and that we are good people and that we are capable of doing good things again.

And maybe the first step in this new spirit that we have is that people can stop and take a look and laugh at themselves, and perhaps you brought this to the American people more than anyone else; the ability to sort of step back, and after all that we have gone through, to see that there is humor in everyday life, and there is a basic goodness, even in a man who, for all intents and purposes, is a bigot.

I am hopeful that the new President, and I won't tell you who I favor, but there is only one candidate who is going to be a new President, will bring a new leadership and will foster this kind of spirit.

We are going to have new leadership in the House and the Senate. New leadership, I think, will be helpful, but this feeling by the American people that we have confidence in ourselves, and that we are a good people and capable of doing good things, again; this kind of uplifting of our spirit is what we need, and maybe we have to look to those of you in your industry, more than to those of us in ours, to be prepared to reestablish that kind of feeling again.

Mr. LEAR. Well, I am going to throw it back at you and tell you that we are going to be looking at you for that inspiration, and please tell us how we can help.

Mr. WAXMAN. Talk to the networks. Let's all talk to each other.

Mr. VAN DEERLIN. Thank you, Mr. Lear.

Mr. Lear. Thank you very much.

Mr. Van Deerlin. It has been an unusually rich experience hearing from you.

Mr. Lear. Thank you, sir. It was a very lovely experience to be here.

Mr. Van Deerlin. Our next witness will be the executive producer of "Star Trek," Mr. Gene Roddenberry. We will adjust our helmets.

STATEMENT OF GENE RODDENBERRY, EXECUTIVE PRODUCER, "STAR TREK"

Mr. Roddenberry. I have just actually some notes here. I hadn't prepared anything, but if I may.

Mr. Van Deerlin. Please.

Mr. Roddenberry. In order to suggest to the committee some areas of inquiry which my particular background and experience might prove helpful.

I would like to briefly illustrate my perspective on the television family hour with an incident which occurred near the end of the late-lamented Vietnamese war. "Newsweek" magazine came out with rather a shocking color photo, a front-page photo of a Vietnamese mother, here face contorted in agonized grief, carrying in her arm the bomb-torn body of her infant child.

When it appeared on the newsstands in Dallas, the city fathers there rose up in righteous indignation and required news vendors to paste a strip of paper across the magazine cover, so that the baby's genitals will not be seen and offend anyone.

In my opinion, the family hour is just such a strip of camouflage across the face of television. It pretends that a few selected areas of physical violence and sex are the real problem, while completely ignoring the vastly larger picture.

I suggest to this committee that sex and violence on television are merely items exposed by much graver and critical issues.

You have had at least one witness here, and you have probably had more during your investigation, who have stated that studies prove that violence seen on television by young people can cause juvenile delinquency, and I must say in all respect for those researchers, that they have hardly come up with any remarkable or original discovery. Literate humans have known for dozens of centuries that people's opinions and values are affected by what they see, and that dramatic protrayals of life are often much stronger than the reality around people.

And indeed, this is the earliest statement in any sophomore course on literature. Indeed, this is what literature is all about, whether it is carried in the printed word or on stage or in a comic book or on an electronic tube. Drama, and particularly fictional drama, has always had enormous effects on the audience; much more than fact or news usually does, because the very essence of drama is to take the audience and force them to become a part of the story, to identify with the participants, and to feel as they feel, and often think as they think.

So there is no question about what people see on television affects them, but this very fact opens up a whole spectrum of subjects that are usually ignored in these investigations, though I am sure not by yours.

For example, did the juvenile commit violence because he saw a similar violence portrayed on the screen, or was it because his attitudes and values had already been twisted and eroded by all of the television that he had been watching for years?

This is where the very simplistic cause and effect arguments break down. How could you blame a robbery dramatization on one show, and then ignore the damage caused by years of anesthetizing the juvenile's brain with inane kiddy shows, the vulgar materialism of game shows, where he is seeing adults prostituting themselves into jackasses to win a new car, and the snake oil commercials, where even a child can see the transparent deceit in them?

We, who are in television and take our responsibilities seriously, often do not know whether to laugh or cry when family hour-type censorship comes up, because it is censorship, gentlemen, that created this unwanted violence that everyone is talking about.

We, in the industry, are not that barren of ideas, and as Norman Lear and others have proven, we are capable of fashioning an exciting drama out of the thousands of real issues of life and the rights and the wrongs and the conflicts which exist in everything: sex, religion, politics, corporate life, militarism, and everything else.

The structure of television, however, the way it is structured, does not allow our people often to write on these things, and when you take almost all the meaningful subjects away from a writer, all you have left is sex and violence with which to provide the conflict that is necessary to draw the mass audience.

This is not because television networks are evil, or that their executives are thoughtless men. Like us, they work in a medium whose primary corporate purpose is really not to entertain and not to inform, and this is something that is very seldom brought up when these subjects come up. Our basic problem is, this is not the primary purpose of television. The primary purpose of American television, as it exists today, is to sell products. It is structured that way not by any diabolical plan, but because this is the way it happened to grow up.

And these commercial messages demand mass audiences, and often, this means the lower and lower middle bulk audience, whose opinions are sufficiently malleable to be changed by commercial messages. I think even more unfortunately, it is these same malleable minds which are most likely to be convinced that the meaning of life, the alpha and omega of existence, is in that breathtaking vista somewhere between "The Beverly Hillbillies" and "Let's Make a Deal."

I won't go on about sex and violence, because I am sure you will have specific questions on that, but I will say, and Norman was trying to say it, too, that our problem is less violence than it is unmotivated violence and dishonest violence and unmotivated sex and dishonest sex.

Let me just say that I am certain of only two things; one, that the answer to television's problem is not more censorship on top of the existing, crippling, commercial censorship that has plagued this medium really from its very beginning. And two, I think we had better find some answers and find some answers very quickly.

We are no longer dealing with that pleasant, little idiot-box gadget which we can watch occasionally for entertainment and some shopping information. We are dealing in television, gentleman, with a sound and image device of incredible potency which is now being used in this country at the astonishing rate of something like billions of people hours each week. It begins to appear that our schoolchildren are watching television for 2 hours for every 1 hour now actually spent studying and reading books, and the adults probably come off with much less. Well, the average adult is probably watching something upwards of 10 hours of television for every hour actually spent reading newspapers or books.

Mr. Van Deerlin. Your statistics on the children are a quantum leap forward from the ones we received yesterday.

Mr. Roddenberry. Yes, sir.

Mr. Van Deerlin. Which was 15,000 hours, against 11,000 by the time they have finished high school.

Mr. Roddenberry. And to make this whole picture worse, our most respected engineers and scientists in this field tell us that the telecommunication explosion and revolution is really just beginning.

What we are probably dealing with, gentlemen, is nothing less than a wholly new form of human communications, and it is something that may be significant in its own way. What we are seeing may be something as significant in its own way, if you can believe this, as the invention of the Gutenberg press, but we have no guarantee that the results of this are going to be anywhere nearly as happy.

Mr. Van Deerlin. Well, thank you, Mr. Roddenberry. You have done an excellent job of laying out the problem. Of course, broadcasting as we know it is distinctive to the United States, as contrasted to countries where its growth was not only under government license, but under government supervision.

I don't think many of us would want to trade for what we find in most other countries. But given the problem that you have enunciated—pursuit of the advertising dollar being the sole, the be-all and end-all of broadcasting—where would you, as a member of the Federal Communications Commission, or as a member of the Communications Subcommittee in Congress, where would you start in trying to bring order out of chaos?

Mr. Roddenberry. I think some of the things that have been suggested, the meeting between the thoughtful people on all sides of the industry involved, to discuss this problem. I think one of the keys must be increased programing that does not exist there totally for the purpose of selling as many cans of beer and bars of soap as possible.

I think that some of the problem is going to be solved for us, unless Congress is unwise and keeps these things from happening, solved for us by cable television. There are those in cable television now who know it pretty well; who predict that we will probably be a completely cable nation well within a dozen years.

We have now very close to a capacity of direct satellite television to the home. We are very close to that. Disco-vision, and many other things, are coming around which may give us an ultimate possibility of sort of a demand television, where you can sit in you home and really order what you want, rather than sitting there and having to take what someone else decides to give you at a given time.

Mr. Van Deerlin. So you say the expanding technology itself might encourage diversity—widening, rather than limiting choices to the viewer?

Mr. RODDENBERRY. Yes. Yes. Unless that technology is halted or restricted by Federal law. And as you know, there have been many approaches in this direction; to stop cable television, or limit it. I think that anything that tries to stop and limit the ways by which our people in this country have better and better communications is an evil and a bad law.

This would be like limiting the Postal Service, which we have kind of already done anyway, although not meaning to.

Mr. VAN DEERLIN. You recognize, though, that in the situation that you describe, where you have got a board of directors whose judgments must be based on income, and that income is based on ratings, it is rather an uphill hope to think of turning this around—of getting more programs on the air that aren't concerned with making money. That isn't going to happen, is it?

Mr. RODDENBERRY. No. It is a very difficult thing. They are highly successful corporations. They are extremely profitable, and they become more powerful every year. They are so powerful that they are very much a part of our process by which we elect our representatives in government, and it is going to be very hard, very difficult, in view of this power and this success to work changes.

I think that what we must work toward is a broader spectrum of television, where—I am in favor of networks, I am in favor of advertising on television, but I don't think this should compose a majority of all the new and exciting things that we can see. We must expand that. We must seek television from other sources.

Mr. VAN DEERLIN. You have carved success with a program commanding the wide audience that only a network apparently can provide. What you now offer as an alternative is surely not going to do any more for you, as a producer of a popular show, it it?

Mr. RODDENBERRY. Well, those are not the networks' airwaves. Those are the people's airwaves. I applaud the networks when they use them well, and I criticize them when they use them badly.

Mr. VAN DEERLING. Mr. Waxman,

Mr. WAXMAN. Thank you, Mr. Chairman,

Mr. Roddenberry, you produced one of the successful shows on television, "Star Trek," which appealed to a wide audience on a number of different levels; to young people and to older people who appreciated the story and appreciated some of the other underlying themes that you had.

Did you have any problems with the networks in producing a show like this? You touched controversy now and then in that show.

Mr. RODDENBERRY. Yes. I had some problems. I very carefully refrained from telling them that the big lettering on the ship, "USS Enterprise" didn't mean U.S. Enterprise, and after we got the show on the air, we sprung on them that that really meant, "United Solar Ship," and that we were past petty, national orders, and so on, by the 25th century.

Mr. WAXMAN, You are an optimist.

Mr. RODDENBERRY. Well, I think if we achieve inter-stellar travel, we are going to have to put a lot of our petty differences behind us, or we will never get there.

God help us, if we can't learn to live and enjoy the small variety we have here, if we ever do get out there and meet the true variety which is probably there.

I had problems, yes, but I was helped by two things. "Star Trek" was sort of a fluke. It was the first continuing series, science fiction series, of its type. Science fiction wasn't well known in those days. It was considered something that a small group of nuts did for other nuts, and so we didn't have any experts in science fiction then, and I could say, well, "Obviously our ship will use a transporter," and this and that, and no one argued. It would not be as easy today.

The other thing that helped me is the fact that science fiction has been, for centuries, a very lasting field for making comments. When I started "Star Trek," I was thinking of "Gulliver's Travels," in which you can read it as a child and you see it as a marvelous fairy tale of a giant and little people. In college, you reread it, and you discover that it is a remarkable, critical comment on the religious and political systems of that time, and "Star Trek" was very much my effort to escape.

I had been a freelance writer for television for 15 years. "Star Trek" was very much my own little plan to escape censorship. I figured that if I had it happening to little polka-dotted men on foreign planets, I could possibly get it by the network censors and talk about sex, religion, and those things. And fortunately, indeed it did happen that way.

The 14-year-olds knew what we were talking about, but we got it by the censors quite often. I think probably it was also helped by the fact that they really figured the thing that was happening, we were one of the few shows ever able to make any comments on Vietnam, and the reason we were able to do it is, we put it out there and it was considered not very important.

I take pinpricks at these executives. It is important to understand, though, that there are bright men there who care for their families and who are involved in worthwhile community projects who are as much a prisoner of this system as all of us.

But yes, we did use "Star Trek" that way, and it may interest you that the fan phenomenon that people talk about is not a phenomenon of a group of teenyboppers jumping up an down. Over half of our mail concerns subjects we had introduced in the show; the sanctity of life; that to be different is not necessarily to be evil, or to think differently is not necessarily to be wrong, and things like that.

There seems to be an enormous hunger in the television audience, not just for images to admire and to emulate, but for ideas to fill this vacuum that Norman spoke of that seems to be around everyone.

What should I be? How should I think? In the absence of the old codes, my God, give me something to hang onto that makes my life meaningful, is what they are saying.

Mr. WAXMAN. Still in "Star Trek," you had action, or what some people might call violence. You had a futuristic kind of violence, where one might be zapped out of existence by some kind of mechanism.

Mr. RODDENBERRY. Yes. It is not very bloody when you just "ping" them out of existence, although we did try; we had on our phaser guns, stunning settings, and that sort of thing. It is much easier.

I do not object to violence itself. I have a son growing up. There are some types of violence I would prefer for him to see. I don't want him to see dishonest violence. I want him to see that if a grown man hits another man in the face with a fist, that knuckles break and bones shatter, and that is a messy, harmful, stupid thing to do.

That is part of his learning process, and I think people that deny my child a chance to see reality like that are hurting him much worse. You are censoring the learning and growth process of my child.

If Norman's shows, which I greatly admire, I am sure had not achieved immediately a very strong rating, those shows would have been censored to death, and all of us would have been denied a chance to learn the marvelous points of view that he has given us. He fortunately, out of his talent and timing, and many things, jumped to a 50 rating, or something very near to that, where he was selling so much toothpaste he could stand up to the networks.

God help his show had he had a meager 21 rating, or something.

Mr. WAXMAN. It probably would have set back the whole cause of getting any controversial subjects on TV many, many years.

Mr. RODDENBERRY. I think undoubtedly it would have, yes.

Mr. WAXMAN. It would have been the "Al Smith" of its time.

But I am interested in your notions of violence. You seem to indicate that you think it is healthy for your son to be able to see violence and to understand the horribleness involved in some kind of violence.

Mr. RODDENBERRY. If it is real, if it is honest. He is going to grow up in a real world, in which these things are there. I want to him learn the reasons not to hit a man in the face with his fist, rather than the movies, where we see that all strong, macho men hit each other in the face and shake their heads and usually grin and go on to other things.

Mr. WAXMAN. But "Star Trek" violence wasn't real. It was fantasy, escape.

Mr. RODDENBERRY. "Star Trek" was violence, was fantasy; yes.

Mr. WAXMAN. Now, what if one would argue that some of the violence that some people object to, because they find it unreal, may well be escape and fantasy for others?

Mr. RODDENBERRY. Perhaps it is. If I had not been in a censored medium, the violence I would have shown on "Star Trek" at times would have been much more real.

I think, for example, that we have had 35 years of war movies in this country, and usually the hero clutches his breast and dies very quietly, sometimes with a little smile on his face for having been able to give his all. I think that during those 35 years, if our soldiers had died in pictorial depictions in movies and in television the way those of us who have been in combat know men die, often screaming their guts out, we would have had a lot less people saying, yeah, let's send our kids to war.

Mr. WAXMAN. David Gerber was here yesterday, and he talked about "Police Story" and thought that the violence in a story like that had a beneficial effect, because, first of all, it fit into the whole program, and then I think some people might argue that a program that shows that crime doesn't pay and the forces of law and order succeed in capturing the guilty parties, is a healthy thing for people to see and have images of.

What would be your reaction to that?

Mr. RODDENBERRY. I think that it is a question of taste and intelligence and literacy. The fact is that some of it is probably good to see, but when you have 30 police shows on the air, all of whom are showing that police work is violent and shooting and slugfests, and so on, every night, they are showing police work not as it is.

I also object to the overall theme of most police shows, which is a rather simplistic one; that the answer to crime is really quite simple. You have got to catch him, shoot him, or put him in jail, and it is not at all that simple.

Mr. **Waxman.** I find it ironic that some people that scream the loudest about violence on television have no objection if the violence on the show is where the police are the heroes.

Mr. **Roddenberry.** Yes; that is, unfortunately, in some cases, very true.

Mr. **Waxman.** But doesn't that indicate, and isn't this an example that you gave, of the war movies; that stories and characters, and how they are depicted, and the kind of action or, quote, violence that is used, can fulfill another purpose?

During World War II, there were a tremendous number of films made that glorified our cause, as opposed to the cause of the Axis powers, and the kind of movies you described were so prevalent during World War II. A lot of that was very much encouraged, to build up the spirit in this country in preparation for a war.

How do you react to those kinds of things?

Mr. **Roddenberry.** Well, I am antiwar, so I am not very much for the systems we use to build up this anger against the heathen enemy, and the things that result in our Japanese citizens being thrown into concentration camps, and all that.

Mr. **Waxman.** Well, I assume you are anticriminals.

Mr. **Roddenberry.** It is just hard for me to relate to that.

Mr. **Waxman.** I assume you are anticriminals; antiburglars, rapists, murderers. If the police are arresting them and, in the course of a drama about that the police are themselves involved in violence, or the show depicts violence by these criminals, do you find that not bothersome?

Mr. **Roddenberry.** Yes, it bothers me that we are depicting crime, and that the whole spectrum is crime is really as simple as catch them and shoot them or throw them in jail. It is really not that simple at all.

I can't really say that I am antiburglar. I am anti the act of burglar; I am anti the conditions that cause it, but if we are going to pretend to talk about these things, why then we should examine them in some depth and make some intelligent appraisals, so that these stories can also be a learning process, which is what literature has always been.

Now, may I make one point? I am not saying that "Beverly Hillbillies" is bad or the simplistic police show is bad or "Let's Make a Deal," or any of these things. I am saying that when you have a system, though, that makes this the beginning and end of what you see, except what some lucky accidents here and there, then it is bad.

If we had a system, and if we can build a system, in which the breadth of human experience is available to viewers, as it is in printed literature, then it doesn't matter that we have pulp and bad things, because they are just a part of the whole thing. It is this limiting of television to a few proven formulas that has made it very bad, because this is saying to the people in this country, whether we like it or not, and it is going to be getting through to them, that this is the breadth of human experience and human value and the meaning of life.

Mr. WAXMAN. I think you are absolutely correct, and I appreciate that comment. I think it is a perceptive one, in terms of talking about the fact that we don't get the diversity. But assuming we had diversity in programing, different kinds of programs showing different kinds of things, would you think that it would be appropriate to show a drama on TV that showed the violent acts of rape or mayhem or murder, which is, of course, part of the reality of our times, and even in the conclusion of that show indicating that the person who perpetrated that kind of violence was not arrested, which so often happens in our society, was never prosecuted and, in fact, did not suffer any as a result of his actions? It is realistic.

Mr. RODDENBERRY. Yes; it is realistic. I think what you show requires taste, just as I think that although I see nothing wrong with doctors' skills in operating on human bodies, I think it is rather remarkable what they can do; open us up, change things, I think it may not be, at this particular state in our development, a thing to put on prime time television, because many people would be adversely affected by it, so I think that certainly taste always functions in this.

But I do think that in the subject you are talking about, to show controversial opinions on it must be done.

Mr. WAXMAN. Tastes differ, though, and what might be one person's taste might not be another's. I would not be able to watch a show, prime time or otherwise, where an operation, a surgical operation was taking place, because I just don't like to watch such things, but some people might find it interesting and educational, and it is certainly a reality. Should my taste dictate over someone else's, or should someone else's dictate over mine, and whose taste should prevail? How should these decisions be made?

Mr. RODDENBERRY. We have got to give our artists who work in various fields as much freedom as possible, because they do us a very necessary service, so we must let their taste really dominate, because they present different views of life to us which we can select. What should be done, then, is for you to have the selection, the choice to select what you want to see.

I think some of this may be taken care of in the fact that we will have many, many more television channels available to us in pay TV, and other ways, in which you can select, if you want your family to see a certain level of reality, and so on; certain channels that will bring that into your home, and if another person does not care for those things, they will select and pay for these channels.

Mr. WAXMAN. Do you think the taste of the writer should predominate?

Mr. RODDENBERRY. Absolutely. The writer and the artist in all ways. This is what art is all about. You ask these people to take this confusion of life that is around all of us, that is so complex we often can't make heads or tails of it, and what the artist does in all fields is pull a few strands of it and arrange them in some sort of a pattern that you can work with and say here, here is my view, and another artist says, and here is my view; it is different. And then another artist, my view. And this provides you with a lot of perspectives from which to look at life, and it helps you make up your mind and helps you form your own opinions.

Art is not just a nice thing to have. It is a vital part of every society. It is why every society from the beginning has had it.

Mr. WAXMAN. How would you react to—you know, we see a conflict evidently between the creative community and the networks, or the people who have some ultimate control over what goes on the airwaves, and how would you react if they were to say, hypotehetically, that, in effect, what you are saying is that the artist should have the say for all the reasons you indicate, and that it would be self-serving for the artist to say that; that, in fact, they should have the say, because they are the ones risking the capital, they are the ones who are doing the unique and productive work of putting together a whole package that produces income, so that the artist and others can make money and survive in a free enterprise, capitalist system, and that they take all the business risks and, in fact, the artists are also thinking of the financial gain to be made, because they, in their own work, will take into consideration what will make money and what won't, and they would make that kind of evaluation.

How would you react?

Mr. RODDENBERRY. It is a very good point you make. We are always going to have some of that, even when you are as free as a novelist. You always have a book publisher who will decide whether or not to publish it and will often advise you of changes that will make it more marketable, more salable or more interesting. I have no objection to that. I think that this is a part of all artistic pursuits. Painters have their people who sell their paintings.

What I object to in television, though, it is not two sides trying to get together to fashion a better and more artistic product. It is one side doing that, but another side which is using the product to do an entirely different thing to sell products with, so we don't have the usual relationship between artist and businessmen. In some instances, of course, you do. I have had studio executives and network executives risk their careers to do something daring, but generally, it is the system that prevents this.

Mr. WAXMAN. Well, let's change the system for a minute and say that it is not to sell the advertised product, but it is just to get the most viewers, because the most viewers for an author of a book means more money for those people who are purchasing the book for a television program, or it would be more people watching the show itself.

Well, of course, what I am in effect saying is that the product is being produced for as large an audience as possible, and to get as large an audience as possible, the kinds of things that might well appeal to as large an audience as possible is a factor to be taken into consideration, either by the writer, even without the middlemen, so to speak, or by the other people who are talking about the more immediate profit.

Mr. RODDENBERRY. If I understand your question, in order for a book, though, or other things to be viable, you do not have to have that kind of mass audience. You can very comfortably sell a couple of million copies of a book and become a famous author.

What we must do on television, though, because of this system, we must, on prime time, attract and hold each week a minimum audience of something like 18 million people. You can only answer in how ridiculous that is by saying that is far more people than probably have seen Shakespeare in this country. You must do that every week, every time you come on the air, and this means that common denominators must then be sought.

I cannot, if I am capable, or can Norman or any of us, do a program that 10 million people, 10 million people, will say this is such a thing, this is a thing of such import it will change the course of the world for the better. We cannot get that on the air, and if we did, we could not keep it there. Now, I submit to you, that is a frightening thing, that the most powerful now of all of our communications mediums is structured so that someone that can do that is not able to do it.

Mr. WAXMAN. You did "Star Trek" for NBC. Did NBC ever ask you to write in more action because it would make the show more popular?

Mr. RODDENBERRY. I don't recall that ever specifically. I had been as I said, a freelance writer for some 15 years, and I knew the rules of the game. They don't have to keep reminding me of rules that I have been working with for a long, long time.

And so when you ask writers and people who come to you do they ask you to do this or do they ask you to do that, you must understand that 90 percent of the time, it is not even necessary; you are professionals in this business. You know what is required, or you are going to go off the air.

Mr. WAXMAN: Well, I want to thank you for your testimony. It has been very helpful, and I think you have given us some real insights.

Mr. RODDENBERRY. Thank you, gentlemen.

Mr. VAN DEERLIN. Thank you, Mr. Roddenberry.

We will hear next from a panel of witnesses, a group informally calling themselves the caucus; Mr. Leonard Stern, producer of "McMillan and Wife" for Universal Studios; Mr. David Levy, former programing vice president at NBC now a Hollywood TV producer; Mr. David Dortort, producer of "Bonanza" and "High Chaparral"; Mr. Norman Felton, producer of "Dr. Kildare"; Mr. Alan Courtney, president of Youngestreet Productions; Mr. John Mantley, producer of "Gunsmoke," currently executive producer of "How the West Was Won."

STATEMENTS OF LEONARD STERN, PRODUCER, "McMILLAN AND WIFE," UNIVERSAL STUDIOS; DAVID LEVY, HOLLYWOOD PRODUCER; NORMAN FELTON, PRODUCER, "DR. KILDARE"; AND ALAN COURTNEY, PRESIDENT, YOUNGESTREET PRODUCTIONS, ON BEHALF OF THE CAUCUS, ACCOMPANIED BY SAMUEL SACHS, ATTORNEY

Mr. SACHS. Mr. Chairman, if I may make a brief statement. I am Samuel Sachs of the firm of Simon & Sheridan. I am sure you know at least Mr. Simon. We are the attorneys for the caucus. We have met informally, but Monday night and this morning, with a view toward how we can be most helpful and effective in making any presentation that you would like, and unfortunately, the television business does require people to become deeply involved with production problems, so that all those who would have liked to appear unfortunately could not appear, and even those who have appeared have their own problems, but they are here. They did want to do whatever they could to be helpful, in connection with the committee work.

So what I would like to do, and we thought maybe most effective in a presentation for you, is to establish a sort of order of the four people who are here.

So the four people who are here are Leonard Stern, Alan Courtney, Norman Felton, and David Levy.

I think for an effective presentation, possibly if you call them in that order, and they will try, I think, to avoid being repetitious, but it is in your hands, and you depend on what your procedures are.

Mr. Van Deerlin. For this panel, I will make you the quarterback.

Mr. Sachs. So, if we may, Mr. Stern.

STATEMENT OF LEONARD STERN

Mr. Stern. I think it might help to just determine for your benefit what the caucus is, and perhaps remind ourselves, and we do in our aims and objectives say that we are a group of concerned producers, writers, and directors representing a broad spectrum of the creative community which creates and produces network television programs and motion pictures.

The caucus was created for the purpose of assuming a more direct responsibility to the American viewing public in network programing, to protect our standards and our integrity as creative artists.

In reference to this specific matter, the caucus stands for the same freedoms of expression for television programing granted to other mass communication media. The caucus, therefore, is opposed to any unreasonable, unwarranted intrusion into any area of television programing, be it governmental or groups which lobby and influence such legislation. That is, I think, representative of our feelings.

Sam, you don't mind if I impose a new condition. I think there is a certain give and take freedom. I feel suddenly inhibited by order. We have never had any in the business. I couldn't start it now. So if anyone feels they want to speak, if it is all right with the chairman, you know.

Mr. Van Deerlin. Absolutely.

Mr. Stern. Thank you.

That is the categorical statement, and does anybody wish to speak? Norman.

STATEMENT OF NORMAN FELTON

Mr. Felton. Well, I would like to thank you for coming and holding this session and giving your time to come across the country here, because I believe it is about the first time that a group has come to the creators of about 80 percent of the television programing, and that comes from the west coast.

There have been discussions by governmental commissions, and other groups, with networks and advertisers, but we can't remember when those who build the shows were invited to answer questions, try to supply answers, and we do hope that—we don't know what your plans are or what you intend to do following these hearings, and we would like to know it. We would like to know what you plan to do, and we would like to help with whatever you plan to do, and we hope that this is a door that will open for the creative community, and I say that on behalf of the caucus.

And I would like to say one other thing before one of the others talk, and that is, now this is a personal thing with me. I believe we need scrutiny. I believe we need to have as many hearings a year as we can get within the framework of being able to get our various jobs done, because I do not believe in censorship by any one group. I do not believe that the creative community should be put in a position to have their work dictated to them by networks or advertisers or the government or any other body.

But I don't believe the public has been heard enough, and to my mind, the television programing is really for them, and they should have a sounding board, which they have not had, and the only way that I know of, outside of having a commission made up of public figures, which I have always felt might be a way to think about in the future, composed of people who have, in their own lives, exhibited a public responsibility and a decency and who come from the arts, fr government, from advertising agencies perhaps, and from network , or any other walk of life; certainly from education, who can be a bridge for the public to what we do.

And if the public feels that what they are getting in television should be improved, then here is a body that can be a receptacle of that, and because that exists, I think networks and advertisers might very well respond by the very existence of such a distinguished group of people.

True, we have had groups such as the FCC, but it is more of a licensing body with a channel to the networks, more than anything else it seems to us.

In lieu of that, then we creators have to have some kind of a feeling from the public, and we are getting it, and we are getting it through you and other groups. and there must be more, who challenge us, but we do jealously hold dear to us the rights to reflect what the public may want in our own way and not have it sifted through network executives, for instance, or advertisers.

Thank you.

Mr. VAN DEERLIN. Thank you, Mr. Felton.

STATEMENT OF ALAN COURTNEY

Mr. COURTNEY. Well, I am not clear in my own mind; perhaps I should have done some homework, but I am not clear in my own mind whethr this subcommittee is investigating the question of whether there is excessive sex and violence on television, or whether this committee is of the opinion that there is excessive sex and violence and is looking for responses to that question and possible solutions or changes.

Mr. VAN DEERLIN. Well, the whole subcommittee, Mr. Courtney, is made up of seven members, and there is no single viewpoint, I assure you. Both politically and in our social views, we have seven different grades of opinion. I think all of us are a little sensitive to the fact that a Government committee is relating itself at all to programing. That should involve as much independence and freedom as possible.

We know that the heavy hand of Government, down through the years, has never contributed much to independence and freedom for artists or political voices. So these can be described as oversight hearings, essentially to see whether the regulatory commission over which we have jurisdiction as an arm of Congress, the Federal Communications Commission, is doing its job in the public interest—particularly in its possible involvement with decisions for the family hour.

Yes, I think we are concerned, because in broadcasting, Government does have a responsibility for licensing the 671 occupants of radio bands and television channels. We must know whether the Commission, in its licensing and license renewal processes, is giving proper concern to the total impact of this magnificent medium on the public.

It is a medium that didn't even exist when the communications law of 1934, which is the basic communications code, was written.

I assure you that nothing is going to happen in this 94th Congress, in the way of new legislation. There isn't time. With possible changes at the top in Washington, any significant legislation would wait until next year anyhow.

But I think that I can assure you that one of the things we are thinking about is possibly a top-to-bottom look at possible revision of the communications law itself. As one who came up out of journalism and broadcast journalism, I am one who is particularly sensitive to that heavy hand of Government involving itself.

I would hope that my influence, such as it is, would always be exerted on behalf of maintaining the greatest possible freedom for those multiple voices and those varied artists whose efforts go into providing what the American public sees on its publicly owned channels.

Mr. COURTNEY. Well, I must tell you that my response to your comments is that I no longer resent having taken the time to come here today.

Mr. VAN DEERLIN. Thank you.

Mr. COURTNEY. You have established a unique situation in my experiences with Government agencies and the FCC in that you do have something in your background that qualifies you to have an opinion.

Mr. VAN DEERLIN. I will be glad to tell Mrs. Van Deerlin that.

Mr. COURTNEY. My personal attitude, and we agreed that once the caucus position was established, that the only honest thing we could do would be to establish our own personal attitudes, and my background has been extensive in that work. I was with NBC for 13 years and with CBS for a considerably shorter period of time in the program department.

And the thing that I have always struggled with is my realization that television, with integrity, attempts to be responsive to the audience. It attempts to be responsive. It attempts to read trends. It attempts to find the appetite of the public, and then perhaps overfeeds it.

It is logical that if you find out that the audience is receptive to police shows, that everybody will start making police shows, and I think that the thing that we have to be aware of is that drama, the arts, theater, really has never motivated or instigated or been responsible for the quality of life. It has reflected it.

Television does not initiate. Television portrays, to the extent that it is done well, reality. Now, perhaps not realistically, but we are living in a period where, over the period of years that have resulted in the development of television, in my opinion, and that of many others, the quality of life has deteriorated rapidly and seriously, and the amount of time that is spent portraying violence on television doesn't offend me nearly as much as the reality of the amount of violence there is in life, as we live it today.

If there was less violence and less crime, there would be less portrayal of it on television.

I have gone, at various times, through the Surgeon General's report, and after a tremendous amount of time was invested by, I assume, well qualified and sincere people, my interpretation of their findings were that in one paragraph, they say that violence on television very well may be responsible for aggressive behavior on the part of the audience, but on the other hand, on total evaluation, they find that it may not. We have that quote here.

I think that that has been the condition that has prevailed following almost every look at television. Sometimes sincere people, and frequently not so sincere people, have been involved in investigating television and its impact, what it should and should not be doing and I think very little has come from it.

One of the things that we would like to establish is a separation between the concern that is registered under the title of sex and violence constantly, as though the two are combined or are one. There may be individual preferences that combine the two, but I don't think the problem is a dual problem.

I think there is a question about the portrayal of sex on television, and there is a question about the portrayal of violence, but I think less informed people get the impression that sex and violence are a dual problem in television and must be addressed. Then, of course you get into the interpretations.

I think that if we can accomplish anything, I hope that the portrayal of violence on television will result in the audience eventually, and the audience is the American people, asking for committees that will deal with the question of legislation that will be aimed at improving the quality of life and aimed at coming up with the type of laws and legislation that will result in a diminution of the amount of violence and crime that we have in our society.

One of the things that I think violence on television, and particularly since those are the shows that deliver it at the present time, the police shows offers the audiences—the violence on television in the police shows is less abhorrent than the reality of violence today. The I feel overkill attitude on the part of being concerned with the criminal and the environment that spawned him and the rehabilitation of the criminal at the expense of very little consideration for the victim, is one of the problems that we face today, and I think that the television show obviates some of that concern, because to the degree that we accept fantasy, the audience has a tendency to believe, watching the television shows, that if somebody attempts to perpetrate a crime, there will be a "Starsky and Hutch" and a "Barnaby Jones" and a "McMillan," or any of the other; "Cannon;" detectives out there to represent the victim.

The truth of the matter is that I don't believe there are many counterparts to those actors in law enforcement or in detective agencies.

I think that all in the caucus represent an attitude that is anti the degree and amount of violence that is protrayed on television because we would like, as creative people, to do other things.

In my opinion, if an evaluation is made, that it would be that there should be a greater diversity in programing. I think that at the present time, people have a choice; not whether they will or will not watch television. That choice has been established. They will watch it. And I am not sure whether they elect to watch the program that is least objectionable, or the one that is most attractive. But when you find on three major networks for a period of 9 to 11 a choice only between police shows and violence shows, that is unfortunate. It shows that we are a little bit derelict in taking advantage of the creative community, because there is no better choice available than that.

There are nights of the week when comedy and musical variety shows are available, but generally speaking, I believe that there is too much lack of diversity for too much of the prime time schedule.

I think that the answer to some of the problems is the opportunity for the creative community to function without as much control as is exerted by the networks at the present time. We do not usually propose to the networks what the program will be and then produce it for them. Generally, the network dictates to the creative community what its needs are, and the creative community responds to the marketplace.

Mr. VAN DEERLIN. Could you be a little specific at that point, Mr. Courtney? How does this come about, do you know?

Mr. COURTNEY. I think that because of the popularity of police shows and the manner in which they portray the type of action that the audience apparently prefers, the networks say to the creative community, we are looking for a good police show. We are looking for a good action show. We are looking for something that will present a detective story with perhaps a different point of view, and that is what we would like you to respond to.

Whereas if the creative individual goes in and says, I have a marvelous show that I think will give you an opportunity to do another side of "The Waltons" or another side of "The Little House on the Prairie," the network has a tendency to say, well, we have enough of that. That type of programing is only appealing in very limited quantities. What we really want is more action shows.

And because we are in this business to make a living; I have never done that but I am going to eventually——

Mr. VAN DEERLIN. Make a living?

Mr. COURTNEY. Yes.

We respond on the basis of, well, if that is what it has to be, then we will see if we can come up with what you are looking for.

You know, the networks are composed of people just like us. The executive levels, the creative levels, those are all family men, those are all people who are responsive to their community, and they are merely attempting to do their job by providing what they think will get the largest number of viewers. That pleases the advertiser, and hopefully, at the same time, pleases the audience.

But rather than gamble, because the stakes are very high, when you find something that seems to be safe and seems to be doing the job, there is a natural tendency to stay with that.

On down the line, things happen. One man eventually is going to be assigned to each of the producers, and he will interpret the strictures and the liberties that the network will permit in a show. Sometimes it is ludicrous and sometimes it is tragic, because people are selected out of the people available.

Mr. VAN DEERLIN. What departments do these fellows come from?

Mr. COURTNEY. From the program department and from the departments of standards and practices, and they have been advised of what the policy is for the family hour, and that policy frequently results in something as ridiculous as a producer or a writer being told that he must remove a sentence that says, there was a pregnant pause, because the network has decided that you cannot use the word "pregnant" during the family hour.

It resulted in a script from a program supervisor once during a series, which you may or may not remember, called "My favorite Martian" being rejected, with the program supervisor's comment in the margin, "Delete this paragraph. A Martian would not say that."

The result of the networks and the creative community to pressures is usually panic, and the idea that there should be programing within a specific period of time that is suitable for the entire family generally results in attempting to create during that hour the impression that the whole world is "Disneyland;" that there are no problems, that there are no issues, that there are no crimes, that there is nothing evil, and that everything is good, and it becomes an effort to balance, and that is controlled by individuals, which leads you into difficulties, because if you happen to have a qualified, bright individual, you are in pretty good shape. If you happen to have an idiot, you are in trouble, and either can happen.

Sometimes the idiots are found out and discharged, and sometimes they are endlessly promoted.

Mr. VAN DEERLIN. One way to get them out is, of course, to promote them.

Mr. COURTNEY. Yes, and that happens. I did become a vice president.

We have a problem. There is no question about it. It is not going to lend itself to a simple solution and, as Mr. Felton indicated, we welcome this kind of dialog, and particularly, as far as I am able to judge, in this kind of a cordial atmosphere. Out of it, something will come. I wish I had solutions to offer, but I think that if I have made any point at all, the point I would hope to make today is that television, and the problems that it spotlights, might result in efforts to come up with committees that will work in the area of attempting to——

You know, we have a document that guarantees every American the right to life, liberty, and the pursuit of happiness, and that is being denied in almost every area of life today.

There are people who will deny you the right to walk through Central Park after dark. There are people who will deny you the right to walk on the streets of Washington. There are people who will deny you all of the rights that that document guarantees. I think to the extent that television violence reflects that, it is good.

I think that there are times when violence is used exploitedly, and that is bad, but I think what we have to do is——

My children are better informed and better educated as a result of television today than I was at any comparable age level. They have seen things on television that I had to do in my later years by going there.

I was brought up to believe that Communists were a horrible, hideous people. Nobody explained to me what type of Communist I am supposed to be afraid of, but merely that I was to be afraid of Communists. And shortly after the beginning of our involvement in World War II, I found myself, with other people, standing in newsreel theaters and applauding when Stalin appeared on the screen.

And it got to the point where I didn't know until the medium advised me who I was supposed to hate and who I was supposed to be in favor of.

My children have seen Russia and Russians. They have seen France and French people. They have had opportunities to evaluate, and they have come to the conclusion that, very much like the rest of the people in this country, there are good and bad Russians; that communism may not be the worst form of government for them, but they have also concluded that it is not the best form of government for us.

There are benefits, and there have been advantages, and perhaps television, in spotlighting, if people would request and be heard. We have a tendency to be led, and when our leadership is good, that is excellent.

I find that my younger children and their peer group have a most unfortunate attitude toward Watergate. Their feeling is that Mr. Nixon made a serious mistake. He got caught. That is their reaction to it. They are of the opinion that the same conditions prevailed in previous administrations, but that those people didn't get caught. They feel that Mr. Nixon got us out of Vietnam and established dialog with Red China, and they are very compassionate toward him. They feel that he sinned, and that he has been punished. They feel that there is no greater punishment than to have been evicted from the Presidency of the United States, and to spend his life in disgrace, when he had the opportunity to have been perhaps one of the greatest Presidents in our history.

I think their childish point of view is one that I rather embrace, and they are products of the television generation.

The attitude they have about life is that it is pretty good, but they don't compare it to what I knew. They are not aware that there were times when you could have a picnic in Central Park at any hour of the day or night you wanted to.

If television can help bring about efforts on the part of our people to become as concerned with improving the quality of life and our environment, as we are aware of the lack of quality as it is portrayed negatively for so many hours in shows that perform violence, then I think we have accomplished something good. I would like to see television do that.

I think I have wandered from the point. I am going to stop talking.

STATEMENT OF NORMAN FELTON—Resumed

Mr. **Felton**. Mr. Chairman, there is one area, if you will permit me to talk about, that we in the caucus—I have talked to a lot of producers, writers, and directors.

By the way, I was introduced as being the producer of "Kildare," but I have worked since and, as a matter of fact, I started as a writer, became a director and then a producer, and that started in 1948, down to the present.

But like some other people who are in the caucus, we, at times, go to universities and colleges, and I have talked to a number of those people, and they have come away with unfortunately the same thing that I have felt, and that is that young people who might come into television on a creative level, they really don't want any part of it, because they sense that there are areas of censorship, direct areas of censorship, in terms of things that they could do; subjects, perhaps, that they could write about. But also that the present programs that are on are controlled, and they don't want that, and therefore they look for other places to go with their talents, and we desperately need to bring some of these people into the stream of television.

One way perhaps that we can do it is, again, to have forums in which the creative people who now exist and are in the professional side of television can talk to people like yourself, and others, and very frankly I don't mind if the groups are hostile to me, as well as perhaps sensitive to what I want, but I do feel that this will get to the young people who are in colleges and in universities, and they will perhaps find that there is a chance for them. There is a chance for television, and perhaps we can encourage them to come into it. And it is very important to many of us in the caucus that our ranks get some of the new blood.

Mr. **Van Deerlin**. Thank you very much.

Mr. Levy.

STATEMENT OF DAVID LEVY

Mr. **Levy**. I am glad to see that another congressional committee has come out. I particularly was interested in your statement that you are going to examine the 1934 act, and I think one of the things you can examine and define is what public interest, convenience, and necessity mean, because nobody has been able to define it; at least I have never seen a definition by the Commission or by a court, and it is used by both sides of any argument, so no one really has any advantage with that particular phrase.

Mr. **Van Deerlin**. Well, clearly, it is whatever a majority of four Commissioners at any one time say it is.

Mi. **Levy**. Right. I would like to see you also examine the entire structure of how Commissioners are appointed and the qualifications that Commissioners should have.

I think your hearings probably would not be taking place if they were doing their job. I think that they are delinquent. I think that in the question of the family hour, they should have been doing exactly what you are doing; that is, hclding an poen hearing, where those who are for the family hour and those who are against the family hour, the concept of the family hour, would have had an opportunity to speak, be heard.

I don't think that it was proper that only three television networks and the NAB hierarchy and the Chairman of the FCC would hold together and decide that the family hour was appropriate.

The aims of the family hour probably would be endorsed by almost everybody in the business, but the means through which it was effected, as you undoubtedly know, the caucus has opposed that, so I think that the FCC was delinquent in not having an open hearing on that particular subject. I think that they are delinquent in not having an open hearing on the subject of multiple exposure, in relationship to the prime time access rule. Their refusal to have that hearing, just to establish whether a rulemaking procedure should take place, may, in effect, be sabotaging the rule which they established.

I also think that, on the subject of reruns, the caucus is opposed to the excessive use of network reruns. The FCC had that matter under consideration for some years, and network reruns simply proliferated, and the decision was, we will not have a hearing, which is ridiculous.

So I don't think that the FCC operates in the public interest, convenience, or necessity. I don't think they operate at all, with respect to the interest of the creative community.

One of the reasons that the caucus was organized, and it represents many men and women who are concerned about the quality of television, was to form a body that you people, the Congress, the FCC, could look to, so that there would be a voice that speaks for the creative side of the business.

The labor unions, the guilds, have narrow interests, quite properly. They have their own interests. We transcend their interests. We are all members of at least one or two guilds. That is one of the considerations of being in the caucus, but the matters that we deal with do not come within the jurisdiction or the operations of guild activities.

The caucus simply is, it is an ad hoc organization of people, as Leonard, Allan and Norman, one of them said, or all of them said, to represent the key creative men and women behind most prime time programs, the bulk of them, so when you speak with the caucus, you are speaking with the creative community of television.

Mr. VAN DEERLIN. Would you tell us how the caucus came about?

Mr. LEVY. It came about as a body of individuals who were formed shortly after the Writers Guild strike in 1973, and basically, the membership consisted of a group of concerned producer-writers known as Hyphenates because they are members of the Producers Guild and members of the Writers Guild, and the Hyphenates, by and large, are the key men and women in the creative community who sit at the top of all network television programs, so they are an extraordinarily talented group of people.

They are a small group of people, because they are the best in the business. They are, if you want to say, they are qualified through experience and through talent.

A series of meetings were held in which about 15 to 20 people got together, and over a period of time that became the steering committee. Invitations were sent out to other people to come in, and we then organized on a more formal basis.

We are not a group looking for membership, large membership.

Mr. VAN DEERLIN. Did you feel that the organizations from which you sprang were inadequately serving your interests?

Mr. LEVY. Well, they couldn't serve our interests in matters which deal with the aims and objectives of the caucus. I am going to give you a copy of this for your records, and you will see that these areas that deal with—without reading it to you.

The first point spells out the reason:

> The caucus will be concerned with fundamental industry issues that transcend the specific interests and functions of the guilds.

Mr. VAN DEERLIN. Which would be essentially pay and working conditions?

Mr. LEVY. That is correct. That is correct. Guilds are not involved in a great many things that are stated in these aims and objectives. I will leave that for you for your record.

The members of the caucus, I think we are probably one of the most democratic organizations around. If a member wants to come to a meeting of our steering committee, he can come in. We have open hearings. We are not like the FCC. They are open hearings where everybody can hear the officers. Norman Lear and Leonard Stern are our cochairmen. Our chairman is George Eckstein, who is in production today and could not be with us. Our treasurer is James Komack, also in production, and he could not be with us. I am the secretary. Alan Courtney and Norman Felton are both on the steering committee. Gene Roddenberry, who testified, is a member of the caucus. So is Grant Tinker, who testified yesterday, and a great many people at the top level are in our organization.

Recently, we concluded a series of meetings with the three presidents of the three television networks on an issue that we feel is very important that the guilds cannot handle at all, and that is the issue of creative control of the material that is on network television.

We thought those meetings were very harmonious. We thought that we enlightened the three presidents on what actually happens within their own organizations, because they are very busy gentlemen who cannot attend to all the details of individual programs.

And we had those meetings just recently, and we are going to have three follow-up meetings at their invitation some time in early October, to see how relationships between the creative community and the network, people who have been designated to supervise the activities of the networks on the working level with the creators, how that relationship has worked out.

The most important point about this is that the caucus has offered to share in the responsibility of what is carried on network television. We know that the networks are not licensed. We know that any action taken against the networks comes through the licenses that they hold through their owned and operated stations, and that they are responsible for what goes on their stations, and therefore, what goes on the network.

We have no quarrel with the fact that the networks should have the right to make decisions that affect the creative content of a pilot film. That is, what is the basic concept that the producer is offering; who will be the star and who will be the producer. In many cases, the producer-writer, The Hyphenate. It is usually a member of the caucus, or somebody who would be eligible to come into the caucus.

We feel that once that decision has been made, and that is a basic, fundamental policy decision as to what really goes on the network, involves the decision of the programs that are developed, the programs that are selected and the programs that get scheduled into a network.

But after that, the day-to-day operation of the program, we feel, should be entrusted to the producer of that particular program; that all the decisions, all creative decisions that have to do with the content of the program, with the story content, with the hiring of personnel of all kinds; actors, writers, directors, composers, is properly the duty and function of the producer.

If he is not qualified to be the producer, he shouldn't have been making a pilot. If he does not do a good job, the producer can be removed. We recognize the right of the network to request the removal of a producer fromthe production entity which furnishes the program, but we feel that this shared responsibility will once and for all end the debate on why television is in the present state. Whether it is good or bad depends on your viewpoint.

We are prepared to assume that reponsibility. We feel that if we had that reponsibility, the day-to-day operation of a program, the selection of the story material and the selection of the writer, without any interference from the network, that the quality of network programing would be elevated, and that the areas of sex and violence would be diminished, because responsible people in the caucus, and those who are not in the caucus, by and large the creative community has no interest and no desire to concentrate on those areas that most people, most thoughtful people, take objection to.

So we are hoping that the networks will recognize that the sharing of this responsibility will in no way diminish their legal responsibility to the Commission, as licensees, but that the responsibilities to the viewer, our responsibilities to the viewer; we don't have responsibilities to the advertisers; we think that this will be a major step toward altering the present form of TV and the content of TV.

Mr. VAN DEERLIN. Has the caucus—preceding the family hour orders, though not necessarily related to that question—had contact with the networks?

Mr. LEVY. We had contact with the networks prior to the establishment of the family viewing hour.

Mr. VAN DEERLIN. Yes. As an organization, the caucus?

Mr. LEVY. Yes; we had, and I think Leonard can talk on the subject of leadtime, which was one of the important subjects. In fact, it was the first subject in which the caucus took action and got affirmative results from the networks by enlightening the networks about the production requirements of programs.

By the way, Norman, you were listed as "Dr. Kildare," but I was listed as a "former" producer. I need some publicity. I am very active in the business, and I intend to remain active for a long time, in spite of anybody.

I think Leonard can properly discuss the leadtime issue, which was the very first issue we took up with the networks.

Mr. STERN. There are production problems when you do a show, and the more time you can have to create the shows, to write them, to see that they are adequately cast and produced, leads to, hopefully, better quality, and we found that this time was diminishing.

When I first started in television, new program decisions were made sometime in January, and you did not go on the air until the following September or October, so you had 8 months to prepare.

As short a time as 2 years ago, decisions were being made in May, and you were going into production in June, so that you were going in inadequately prepared under frightening circumstances and quality deteriorated, along with health, and we were effective with the networks in establishing a 6-month period between the time that a show is bought by the network, or they decide upon a pilot, and the time it is to be shown on the air, is the minimum amount of time allowed for production, and they have adhered to this.

It was the first successful dialog. Of course, all the people with whom we spoke in that particular given meeting are no longer with any of the networks, so that it requires some radical adjustments on our part and constant memos, reacquainting the present personnel with past decisions and discussions, or acquainting them.

Mr. VAN DEERLIN. The networks are well aware of the existence of the caucus?

Mr. LEVY. Yes; they are.

Mr. VAN DEERLIN. Was there any reason to believe that the Federal Communications Commission was aware of your existence?

Mr. LEVY. They had become aware, because we have become a more formalized body, and for example, we submitted our comments on the subject of the Barmak petition on reruns, and we were encouraged to submit our statement, even though we were a little beyond the date that was required. As it turned out, it was academic, because it didn't matter what the date was, because the FCC had no intention of taking any action on the rerun issue, anyway, so we, ourselves, were a rerun, I think, on that particular subject, so I think the FCC is aware of the caucus today.

Mr. VAN DEERLIN. Well, my questions were a prelude to the next question, which was what input, if any, was sought from your organization, the caucus, in regard to plans for instituting family viewing?

Mr. STERN. None. Our petition on the rerun issue, I believe—I would have to ask counsel. Was that sent in before the family hour ad?

Mr. SACHS. No, that was sent in afterward, but there was no input, to my knowledge at all, from the FCC to the caucus relating to the family hour problem. None at all.

Mr. VAN DEERLIN. And no effort by the network or the Commission to——

Mr. STERN. No. No.

Mr. LEVY. It may be interesting to you, Mr. Chairman, that I have a copy which I will give you for your records; we ran an ad in the Washington Post, the caucus ran an ad, so the FCC is aware of who we are now, since we pay our way. This was an ad that dealt with the family hour. Here is a better copy of it.

Mr. SACHS. This is the ad that appeared in the Washington Post.

Mr. LEVY. And it set out to say who we were, as well as our position with respect to the family hour, and it included the names of all the men and women who were then members of the caucus, so I think the Commission is well aware if they read the Washington Post.

Mr. STERN. I was just thinking, a ludicrous extension of the family hour, if we continue the violence, is suddenly to impose a tranquility hour that follows the family hour, and it is frightening. I think this is the harbinger of things to come that will prevent such happenings, this exchange and dialog.

Mr. VAN DEERLIN. What would be your response to a proposal by the UCLA professor of communications yesterday? I believe it was he who suggested that the Commission could encourage diversity without any objectionable consequences by requiring some specific programing for children during the 7 to 9 p.m. period. He said that despite the family hour requirement, there is nothing that is specifically produced for children's viewing.

Mr. STERN. Well, all I have read on this, and it seems that there is one myth; that children disappear from a set by 9 o'clock. I read just recently that there are still a million children up at 12 o'clock at night, and I am as concerned with one child, and I imagine the specifics deal with only one child and how you affect him.

I don't know how to define it. I think one of the problems with what is family entertainment is that it lacks a true definition and, as you said, the Commission itself would have four. We, at the caucus, would probably have 100.

I think taste has always been the primary factor in anything I have done, and the people I admire have always had this, It seems to be something inherent in good work, and I think when applied intelligently and artistically, you are never offended. You are entertained and possibly educated.

We are in the entertainment business. Somehow, we have gotten into social mores, et cetera, which may be beyond our province. The medium may be misusing its basic concept.

I think violence exists because it begets ratings, and it is good business, and if we can establish that within any given time slot, 9 to 11, 8 to 11, if you put on entertainment values that we all approve of, I am of the opinion that you wouldn't lose your audience.

If there are 20 million people, or 30 million people watching from 9 to 10 on Wednesday night, and you gave them three programs without any violence in them, they would pick their favorite among those three.

I don't subscribe to violence being a necessity, but because it sells tickets, instant jeopardy is the rule, and by that, I mean you cannot start one of the television shows without catching your audience's attention, and the requisite is: Get them up front with something that will hold them, and what is that usually? It is some crime or indication of horror. You will see that most programs are structured that way.

Mr. VAN DEERLIN. So do you think that those millions out there are not necessarily waiting through the early evening hours for that precious moment of 9 o'clock, when the head bashings and the chain beatings are at last available?

Mr. STERN. No, I don't think they are waiting with bated breath. I think what it is is that—I can only speak for my own household, and a few others that I am intimately acquainted with, and I don't see the children disappearing. The selectivity is up to the parent. They can still monitor the set, but I don't think they reflect the feelings.

I think that a militant minority always give vocal demonstrations and implied power exists without there being any power. I don't think that there is a large-scale resentment of what is on. I wish there were, because then it would be to our advantage.

It is very difficult, and I think you have heard this time and again from everybody who has been here who is in the creative community to sell an idea that is countercurrent. You know, iconoclastic ideas are not accepted. You have to have—it has to be an accident.

Most of the successful shows today that are departures are accidents. I think Norman Lear in "All in the Family"—it simply was done twice——

Mr. LEVY. "The Waltons." It was clearly an accident.

Mr. STERN. "The Waltons." They were made but they were not believed in, and then they were put in to be discarded. I think "The Waltons" was a sacrifice offering. "All in the Family" was a summer replacement and get rid of the commitment.

Mr. LEVY. May I say one thing, though, Leonard?

I think we ought to recognize one point. I think that there has been, over a period of many years, the difficulty of doing the things that Leonard Stern is talking about, and so rightly, is that television would require a tremendous restructuring at the top.

The audience has been tuned in for years to violence in its broadest terms, including private eye shows, police shows, crime drama. I call 9 to 11 p.m. crime time, not prime time; but, I think that there has been, and I think the networks should be commended, in, sir, the caucus does not take an adversary role vis-a-vis any other area of the business. We are trying to take a persuasive——

Mr. VAN DEERLIN. With the possible exception of the FCC.

Mr. LEVY. Well, the FCC, yes. We have taken that position, just as of this morning, and that may be my personal opinion.

The three networks—I made us look at the schedules. The midseason programing that was on, compared to the programing that is going to start in the fall, there were 23 programs in the crime area; broadly speaking, to the violent area. There will only be 17. Now, I say, "only". That is still a lot, but a drop from 23 to 17 is pretty impressive. One of those shows will be a western, and not a police show, or, a current action adventure—contemporary action adventure.

Interestingly enough, this coming season, in prime time, on Monday nights, there will be no crime shows. I think that you should take note of that. I think the networks should be commended for it.

Mr. STERN. Just professional football.

Mr. LEVY. Yes. Professional football, maybe, should come under the crime area. I credit that with Leonard Stern.

Saturday night, there will only be one such program on the three networks. Those are the two best nights, but, compared to—And all three networks, incidentally, have a diminution of violence. NBC, in particular, has gone from nine programs to six, of which one of the six is a western. So, they went from nine contemporary shows to five.

CBS went from seven to six, and ABC went from seven to five.

Now, I think it may not be that anybody was sitting at the top of the board rooms of those three networks, saying, "Let us do less."

The ratings were very low on the shows that were canceled, and that has a tremendous impact on network decisions; but, that is also a signal from the audience, and the audience, itself, may be a little weary of ducking the bullets in their own living room, you see.

So, there is an opportunity, perhaps, that the trend is decreasing. I am not going to say that—I can't say that it won't go back, but it looks to me, and I haven't done a study to see how it would shape up over the last six or seven seasons, but, at least, from the past so-called second season, which began in January, to the new season, starting in September, there has been a very impressive, substantial decline in this type of programing on the part of the networks. I think they should be commended for that.

Mr. **Courtney**. On the other hand, I am always suspicious, and this may simply reflect the disastrous developing season.

Mr. **Felton**. I may also suggest that, talking with some executives of networks, they began to sense, the latter part of last year, particularly, that the public was beginning through various media, to object to television programing, and they became conscious and they were worried about beinginvestigated. They were worried about this and that influenced what they programed this year.

The second thing is, I know at least one or two programs that are being developed now for replacements which could be an action-type, because it may be that we have to keep our eye on what happens in January, because if one of these nights a network has a program which may be a good program, as far as the public is concerned, but their rating isn't as high as another, they may put in another action program, which they are gearing up for now.

Mr. **Levy**. I wouldn't be surprised. Or, another movie. That seems, also, to be a fall back position.

Mr. **Van Deerlin**. Mr. Waxman.

Mr. **Waxman**. Thank you, Mr. Chairman.

I am pleased that you gentlemen have come here today and have given us the benefits of your comments.

I wanted us to have a hearing here in Los Angeles so we could hear from the creative community. It seem to me that so many of the decisions, when Government is involved, are made back in Washington or New York, and the family hour viewing is an unfortunate example of that kind of closed door mentality that the only ones who count are the east coast, and the only opinions that they are interested in hearing are each other's.

So, I think this hearing, whether it leads to any legislation or not, which is still an open question in my mind, has a value just to percolate ideas and to exchange some information. It may be the value is more among those of you in your industry than it is with those of us in Government, because we do have constitutional restrictions against what we might do in the areas of free speech, justifiably so, and we are very sensitive to that.

I am pleased you are here. I am also pleased that we have called a caucus, made up of writers, producers, and directors, who feel that they have a responsibility to the viewing public, and who are willing to get together to protect their own creativity.

So, I wanted to preface my probing with you on some of these things with that point of view.

Mr. **Levy**. We would like to volunteer to you, but, we are—we like the fact that your group has recognized a caucus. We have not done any great campaign to be identified, but, we are being identified; but, we would like you to know that we are prepared to meet at any time with any committee in Washington, or with the FCC, and that we are a—I think by common consent in this community—viable, recognized body that will reflect the interest of the creative community: Those who are not members, as well as ourselves.

Mr. **Waxman**. I am impressed, not only that the group is formed, but you have been able to do something this committee has been unable to do, and that is to get together with some of the network presidents and try exchanging some ideas. I find that a healthy sign.

Let us say you do get some communication going and some kind of exchange of views, and you have notions about your obligations to the public. What if the public is then, still, unsatisfied? What can the public do to change the kind of programing that they see on television?

There are only three networks that are the buyers in this market of TV programing. They could call their congressmen and scream and yell. My view is that we want to hear what they have to say, but they shouldn't ask us to do something that would have effects that would be violative of the Constitution.

What if they decided to take action to boycott advertisers who sponsor programs that are violent, or objectionable in whatever way that the public feels that a program may be objectionable, either because of violence or a theme that they object to, or whatever? Do you see a potential conflict with the freedom of creativity that you would like to see carried out in the production community, with the potential for that kind of pressure from the public to the advertisers, and back, again, to you?

Mr. **Felton**. I would welcome it. I think most people do, because we are responsible people, and, although, we do not like the idea of any censorship, ultimately, the viewers must make themselves heard. If they object to something, and go to advertisers and boycott it, and we are unable to continue with our program, that is our problem, and we must face it and change our work.

That kind of censorship by all the people, and not a vested interest, I personally would welcome.

Mr. **Levy**. There are advertisers, as you probably well know: General Foods is one. There are advertising agencies: J. Walter Thompson is one, who have done a lot of research and they have discovered that, from a business standpoint, violence is not helping their business, and even a 4 to 5 percent group of potential prospects for their product, if they don't like violence, that has a big effect on their balance sheets. So, that, some of them are taking positive steps that they will not put commercials into shows that are violent shows. That can be one reason why you may see a diminution, on the part of the networks, in putting on action adventure shows that have violence.

I think that, again—I don't want to be considered the spokesman for the networks here, because I have had my own problems with networks, but I believe that the networks are responsive to the public, if the public wishes to voice itself.

Now, one way they do it is through consumer boycott of goods. That is, surely, one way it hurts the people who actually finance television, and that is the advertiser; but, by writing to—the viewers are not really aware of their own powers. Of course, it is through a great indifference to—it takes great effort to get somebody to write a letter to the editor or write a letter to the TV station in which they object to something. They think that their voice will not be heard.

Actually, even the networks with the limited amount of complaints, as well as praise—both Norman and Alan were with the networks at one time or another.

Network top management is very sensitive to the mail that comes in. Now, it has to be a rather substantial amount of mail, but, even a modest amount of mail, on a given subject, can be of some consequence to management.

Now, when you get a flood of mail that may just desire a program to come back on the air—there isn't a program that is canceled that doesn't have its admirers. The people who love "Star Trek" are one group. There are people who love "Bronk." I don't know why, but there are.

So, every show that is canceled offends a substantial part of an audience. A lot of people love particular shows, but, I learned, long ago, that if audiences wrote in to stations—in one particular case, and Mr. Courtney will remember, that the "Mitch Miller" show had a very low rating in the one time that it was on the air, but we never saw such a flood of mail that went into the local stations, and was delivered into the network offices. That show was scheduled, in part, because of that remendous response.

There was other research done by the network which indicated, or corroborated, the attractiveness of that show, despite the low rating.

Mr. WAXMAN. You approve, then, of the public having its voice——

Mr. LEVY. Absolutely.

Mr. WAXMAN [continuing]. Heard by either boycotts of advertisers or direct mail?

Mr. LEVY. I think we have to approve of it. I think that its viewers should really assert their rights.

Mr. WAXMAN. Mr. Stern, you mentioned that you don't really see a mass unhappiness among the viewers of——

Mr. STERN. It is not manifested, no. I think it exists, but I don't think they have the medium through which to express their feelings, or the representative voices.

You are re-creating, when you talk of a boycott, the basic classic situation that every writer or creator welcomes: A chance to deal directly with the audience, and either win them or lose them. The theater, the novel.

It is only in television that we are filtered by as many screens as do exist: Agency control, network, the competitive market, counter programing. There are so many elements that go into the decision as to what you do and how you do it that the simpler that process becomes, then the more direct, the more favorable, I think, for a creator.

Mr. WAXMAN. Well, let me give you an example of something that has come about, and then raise a hypothetical situation for you to respond to.

We held hearings yesterday. We are holding hearings today here in Los Angeles, and we notice that we were informed that a public relations firm decided to drum up witnesses to reflect one particular point of view at these hearings. They were sending letters all over the place, inviting the district attorney, evidently, and inviting the members of the school board to come and testify in support of family viewing and to oppose violence on television.

Well, the people have very strong feelings about it. They didn't understand, some of them, that it was a public relations firm that was inviting them, and not this committee. I don't know for sure, but I suspect that when we had pickets yesterday, that that public relations firm could have organized the pickets that were out front; but, I don't know. I don't know. But, it is not inconceivable that a public relations firm could do that kind of thing.

Now, let us say a public relations firm, representing a certain political point of view decided they were going to generate a lot of mail, or generate a boycott of a certain product, to try to stop a program that reflected a point of view that was different than theirs on television. Would that bother you gentlemen?

Mr. STERN. Well, that is always an inherent danger, but, I think Norman, earlier on—Mr. Felton had a suggestion. I think he was searching for a formula when he said that perhaps a citizen's committee should exist that serviced the public's needs. They have no arena in which to work. They have no one to contact, and I think such a group would filter or screen out the professional advocates of cause. It is very possible that the public, itself, doesn't know even to whom to write in protest.

Contrary to what David said, I have found, in my experience, that an adversarial letter is given enormous significance by a network.

Mr. WAXMAN. Do you think too much significance is placed on a letter?

Mr. STERN. Yes. It is disproportionate at times.

Mr. WAXMAN. If you think that networks are a little concerned that they might offend somebody's sensitivities now, what are they going to feel like when they get, maybe, 100 letters on a certain particular point of view? Are they going to become too sensitive, and are the advertisers, who don't care anything about creativity, but want to sell a product, going to become too sensitive and feel that they have to intrude too much in program content?

Mr. STERN. I imagine those, again, are inherent dangers, and there would have to be some sense of balance established.

I think the measuring devices will have to be changed in the medium, itself. We rely so totally on spurious statistics, very malleable statistics; things that, when you analyze them, you can make statements like, "We are 100 percent correct 4 percent of the time." I am frightened by how we are dictated to by a group of nonexistent people in our minds.

A report which shows that your show did 28.9, and 30 is passing; that is a frightening factor to me, and I don't know whether that is specious or not. I have no way of analyzing it. A member of the Federal Government tried to, at one time, get involved in whether ratings, which literally dictate what is on the air, and is supposed to be the measuring device for public opinion, are, at all, accurate; if the sampling is good, or precise, or right, or correct.

In theory, if it were, then the public is voicing its preference, and that the only thing they haven't done is verbalized it, perhaps.

Mr. LEVY. The public is speaking through congressional spokesmen, too.

Mr. STERN. Yes, but we are saying, more of that should be done.

Mr. LEVY. On the subject of the Nielsen, we know that the Orrin Harris, some years ago, did conduct investigations into the Nielsen ratings, and other rating services, and out of those hearings, there were some very positive results which altered some of the activities of the Nielsen Co., and the way they structured their random samples, and so on. I think that was very constructive.

No legislation had to take place. The Nielsen people were impressed with the committee's own statistical experts. This is a very esoteric area, and it is very easy to say, "Well, these ratings don't mean anything, et cetera, et cetera, on the part of the public, or even some of my distinguished colleagues."

But, the A. C. Nielsen Co. is a tremendously responsible company. They know how delicate their findings are.

So, people who read the details in the Nielsen book will find that the Nielsen Co., itself, cautions on the use of the material that is contained within the book. If you read that, it is pretty interesting reading, and I think that most people, if they read that, would find that they could support the findings of Nielsen, provided they believed that the methods, and so forth, are correct. On that basis, there have been so many attempts made by major corporations doing their own research which merely corroborated the Nielsen research. I mean, they, instead of talking to 1,200 autometers, they will talk to 100,000 people, and they find that the margin of difference is fairly nominal.

The same statistical methods that are used by Nielsen are used by the Government in figuring out its cost of living index, and so on. So, you have to have—the Government has a lot of qualified people who can deal with that area, and they did; therefore, Nielsen did initiate some reforms.

Mr. STERN. Is the committee aware that each and every pilot is tested before it is aired?

Mr. LEVY. This is an area where we have—Nielsen is not involved in this area, and I think Leonard is a very good spokesman on why the caucus objects to the so-called ratings that are made, not by Nielsen, but by these tests of individual programs, on which many program decisions are made.

Mr. VAN DEERLIN. I will have to claim ignorance, excuse me. How is a pilot tested?

Mr. STERN. Well, there are two different methods, and anybody can supplement this, or correct me.

There is one service for the National Broadcasting Co. and ABC, and CBS conducts it own. They screen the pilot in front of an audience. The climate, the attitude of the audience, its response, is first evaluated by a film they use as the mean, and then they find out if this audience is less or more responsive than the previous one. Up to a few years ago, and it may still be, it was a Mr. Magoo cartoon.

It is still a Mr. Magoo cartoon, and how the audience reacts to that, they then make their adjustments in their apparatus and devices. Then the pilot is shown to the audience and they have controls which vary in different places, so they can respond from very good to very poor.

When I first saw them, they were like a locomotive engineer's device. Now, they may be buttons. They may have gotten more sophisticated.

Then, there is a questionnaire handed out after that, and then about 10 or 12 people are siphoned off into a room and there is direct contact with the person conducting the test. The tests are then evaluated and delivered to the networks, who have their own research staff.

I would say that if you test extremely poor, you will not get on. If you are exceptionally good, you may get on, even though the network, itself, might not respond to that particular program.

But, I have found that there is a tendency to maintain the status quo through testing. The audience will respond most favorably to what is familiar, so that they start to perpetuate the same formats. In a way, this may be the very same public we are talking about who want change, who are doing us and themselves in.

Mr. Felton. The research staffs of all three networks—We all admit that there is one area that they are unable to test, and that is, totally new programing. It is much easier to test a hospital series, a detective series, or something that they have something to go by in the past.

I know that one series that my company produced called "The Man from Uncle" and, also, one other that I did, which was concerned with psychiatry called "The Eleventh Hour," both failed in their testing, but the network, in this case, at that particular time, I believe, had David Levy who was in charge and had an influence in saying—Well, in the case of one, I know, "The Eleventh Hour"—He said, "Let us take a chance on it." But, that isn't done very often, not very often, and that is a weak spot.

Mr. Waxman. I want to ask a few questions of Mr. Courtney, because time is running out. I thought that your testimony was most provocative.

You mentioned that to the extent that violence reflects reality, it is good, and I wanted to probe that with you.

You used the example of police stories where the policeman always catches the criminal, that not being the reality, so often, in the real world.

Would you think that shows that would show crime and, perhaps, policemen not catching the criminal, and the criminal not getting punished, reflecting reality, would be good kind of violence to show?

Mr. Courtney. So long as an editorial—I guess I shouldn't be even in favor of editorial positions, but, so long as the point was made that the criminal should have been apprehended, that the criminal should have been incarcerated, that the victim should have been protected, and that the crime was not justified, but, I think it would be beneficial if the incidence of crimes that are not apprehended, or criminals that are not apprehended, was established in some of these shows.

Mr. Waxman. But, you would still want the morality that crime should have been punished—prevalent?

Mr. Courtney. Absolutely. I think that that is essential.

Mr. Waxman. I see. And, an action, or, quote, "violence," that accompanies a theme such as that you would find not only acceptable, but beneficial?

Mr. Courtney. I believe that.

Mr. Waxman. If we showed reality that is ugly and senseless—it is so hard to explain, but, nevertheless, it is a reflection of what is—would that be acceptable to your television programing?

Mr. Courtney. I don't want to propose that television should become a message medium.

When you say "ugliness is senseless," I am not sure that I know exactly what you mean.

Mr. Levy. I think what he is saying—may I help you?

Mr. Courtney. Yes, please.

Mr. Levy. I think that if you were to see violence as it really is—if you saw what a bullet really does—I don't know how you would do that, but—I mean, it can be done, of course, but if you saw a head explode, if you saw the entrails of a body, a lot of people, I would hope, would protest.

The fact is that violence is so carefully orchestrated and the American public has, I think, been completely—at least there is a generation that has been completely desensitized so that they can sit in their living room, and never ask themselves the question that, as they were young people, they saw 13,000 people murdered in their living rooms. Now, if they saw one really murdered in their living room, they would jump out of their skin, but, 13,000 murdered in their living room in a tasteful way, we kind of accept that with our cereals in the morning; because you can see that in the morning as well as in the afternoon. That is why the family hour is so ridiculous.

There is no such thing as a family time. Families that live all the way through the entire day—they just don't live between 7 and 9 p.m., to begin with.

But, I think that if you saw violence—getting to your point—as it really happened—and I know that Alan Courtney would not want to see that on television—the public would rise and would eliminate it all.

It is just that we have come to a tolerance level. That is being able to accept just so much, and you look at the NAB Code and it is rather vague and general and cautionary.

Mr. Waxman. Well, I was really exploring Mr. Courtney's notion of what should be on television to reflect reality——

Mr. Levy. I don't think he would favor that, even though he has been nodding that he did. I don't think that he really would have.

Mr. Courtney. I don't believe I am going to be afforded the opportunity to change my response.

Mr. Waxman. I was also concerned about something else you said, and, you know, I guess this is really a question.

Your children have the opportunity to go to France, and to go to Russia, and to see different countries, and come back with the conclusion that, maybe, communism isn't so bad there, and their attitudes, as you described that of President Nixon—his fault was getting caught. I find that so troubling when we have a hearing, discussing the sensitive question of the freedom of a human spirit to create and to produce, without infringements, and to have gone to the Soviet Union and not to sense that the stifling of human creativity that goes on there daily, the reducing of humanity to a level where each is the same, to not have felt that, and then to look at Nixon and say, "His problem was that he was caught," when here we had the possibility of this country becoming a police state, where the privacy of individuals, let alone the ability for them to create, would be so incredibly stifling.

To think that, perhaps, for a Soviet citizen human being, that kind of oppression is acceptable, and for this country, we wouldn't tolerate it.

I was just astounded at those comments you were making that I just wanted to get your——

Mr. COURTNEY. Well, I think, in as brief specificity as I dealt with them, that would be a reasonable reaction on your part.

I am disturbed by their reaction and the fact that it is not just my children, but, as I say, their peer group to whom I am exposed around the house.

The point that I wanted to make was that they base their attitude, or their reaction, and they have not been to Europe and to France—I mentioned the advance they have had with television being available to them, to see it on the tube.

They have seen the ballet with Mary Tyler Moore. An American, apparently, on very cordial terms with the Russian people.

What I am referring to is that they have had the opportunity, as a result of television, for which I find many virtues, to make comparisons that I did not have an opportunity to make.

I was taught what Russians were like from textbooks. I was taught that in the United States, we are the best fed, best clothed, best housed, and best educated people on Earth. It isn't true. Moralists are better housed, better fed, and better clothed than most people, but in every society, you find people who are as well fed, well dressed, and well housed. I think that things become more specific today.

My children make a comparison between the level of life, which to you and to me, and to most of us, is abhorrent in the Soviet Union, as compared to what the Russians had under the czars. Now, there has been tremendous progress.

Our democratic form of Government is something that we have attempted to, with great principle, export. We think that it is good for everybody. There are a lot of people whose digestive systems can't handle that, yet.

I have seen Russia evolve more and more and more toward a capitalistic and more democratic system; in my opinion, for my personal preferences, they have a long, long way to go, but I think that there has been progress in Russia for the common man and for the individual.

I have seen, what I considered, our form of Government become more socialistic as time goes on, and we are all feeling our way.

Mr. WAXMAN. These are economic systems. You could tell your children, and I hope you will, that their father came before Members of Congress, members of the Government, and told them to stick your hand out of our business. Don't come in and censor us because we have a Constitution that protects the freedom of expression, and that you are involved in an organization that wants to see the communications media be responsive to the public, itself, but still have a certain amount of ability to create.

The Soviet Union, right now—you can get lists of your colleagues, artists, people who would like to create, to express themselves, who are not able to come, certainly, before the Government, let alone have the ability to do it.

Whether one economic system, or another, produces material goods can always be debated, but there is still something, if you accept the integrity of human beings, individually, to be able to do all of those things that will give them the ability to grow and to produce and to create. No system can be tolerated, whether it is socialistic or capitalistic, in my view, anyway, that stops that kind of individual creativity.

Mr. COURTNEY. Tolerated by whom?

Mr. WAXMAN. Tolerated, according to my standards of what is right.

Mr. COURTNEY. Well, I agree with you, from my personal standards also.

Mr. WAXMAN. OK. Probably if we had more time to talk about it, we would see we don't disagree as much as I might on the surface feel, but I realize you had very little time to carry through a very difficult thing.

Now, the lawyer wants to be heard.

Mr. SACHS. Just one closing brief thing, that this was a meeting for the creative community and not the lawyers, and I wanted to say I think the community handled themselves quite well.

A brief, again, thank you to the committee, and from my personal standpoint, I am pleased that Congressman Waxman is here because he happens to be my own congressman; and, though, I do not know him personally, I have seen him, and the last time I saw him was at my synagogue—Adat Shalom Synagogue, and I am constantly pleased with his devotion to the community problems, the governmental problems. I wish him lots of luck and I wish the committee, from myself and the whole caucus, a great deal of luck and a great deal of success, and continued good health in its fine work.

Mr. VAN DEERLIN. On that very upbeat note, we will now recess, for the noon hour, to reconvene at 2 p.m., this same day, Wednesday August 18, 1976.

[Whereupon, at 12 noon, the subcommittee recessed, to reconvene at 2 p.m. the same day.]

AFTER RECESS

[The subcommittee reconvened at 2 p.m., Hon. Lionel Van Deerlin presiding.]

Mr. VAN DEERLIN. We will resume this hearing.

Our first witnesses this afternoon represent an institution which has conducted a more in-depth research project into television violence, I suppose, than any other academic organization. That is, the Annenberg School of Communications. They are represented, today, by Dr. Fred Williams, dean of the Annenberg School West, and Dr. Gerhard Hanneman, director of the Center for Communications Policy Research at the Annenberg School at the University of Southern California.

I am always happy to greet fellow Trojans at any such function as this.

STATEMENTS OF FREDERICK WILLIAMS, PH. D., DEAN, ANNENBERG SCHOOL OF COMMUNICATIONS, WEST, UNIVERSITY OF SOUTHERN CALIFORNIA, AND GERHARD J. HANNEMAN, PH. D., DIRECTOR, CENTER FOR COMMUNICATIONS POLICY RESEARCH

Mr. WILLIAMS. My name is Frederick Williams. I am dean of the Annenberg School of Communications at the University of Southern California.

I should say, at the outset, that the school at the University of Southern California is somewhat separate an operation from the Annenberg School of Communications at Pennsylvania, where a great amount of the violence research has been done, including George Gerbner's Index of Violence.

We are a new school at USC. We have been in operation 3 years.

We have had considerable interest in television violence, and considerable interest in the family hour.

A year ago in May, we sponsored a symposium in Los Angeles on the Surgeon General's report revisited. This was at the time of the publication of Doug Cater and Steve Strickland's book on the Surgeon General's report. The results of that conference are a matter of record and can be given to you, if you want them.

This fall, we sponsored, on our own funds, a study in greater Los Angeles of the family viewing period, and Dr. Hanneman, who is director of our center for communications policy research, was the director of that study and the principal designer of that study.

We are prepared to discuss with you, today, work that we have done in the school in the area of television sex and violence, and research that we have done on the family hour.

I think it would probably be most efficient if we proceeded on a question-and-answer basis, after Professor Hanneman has made a brief introductory statement about our specific research into the family viewing period.

Mr. VAN DEERLIN. Fine.

Mr. Hanneman?

STATEMENT OF GERHARD J. HANNEMAN, PH. D.

Mr. HANNEMAN. I am Jerry Hanneman and I am from the center for communications policy research at the Annenberg School of Communications here at the University of Southern California.

I would like to talk to you about the research which we conducted last fall, and part of which we replicated again this spring. I will read to you the preamble, just to qualify it for everyone here.

The data that I would like to present to you represent the summary of the significant statistical findings. OK.? These have scientific validity, and some predictive validity, in that case. They represent opinions gathered from 324 randomly selected Los Angeles area residents, before and after the inception of the family hour.

The first question we asked ourselves is: Does the family hour work? Of course, that, immediately, raises a flag because the question becomes: How do you measure? Does it work? Is it effective? And so on.

Well, we looked at a number of areas, and I would like to report these to you.

First of all, since the institution of the family hour, there has been an increase in the proportion of the television audience that believes programing between 7 and 9 is suitable for children. OK? People are much more pleased with programing between 7 and 9. That is one way to define; does it work?

Second of all, families without children, we found, were considerably less satisfied with the fall season television programs than families with children, as might be expected.

Further, if there is time, later we might go into how substantially these people do, indeed, feel they were disenfranchised by the family hour.

Third, despite some perceived changes in the amount of violence shown between 7 and 9 as measured by various indexes, our audience was still sharply divided—In fact, 50–50 divided—as to whether television programing, overall was too violent; although, I should specify that there was a marked decrease in the number of people who said television was violent, particularly between 7 and 9, but there was no marked increase in people who thought television after 9 was too violent.

Second of all, when do children watch television? What seems to me as an underlying effect and assumption in family hour regulations, so to speak.

With or without the family hour, we found, the general family shows attract youths age 2 to 11, and, to some degree, youths aged to 17. Children are not most attracted to violent programs, either in LA, or in our own national comparisons of Nielsen data.

We found that the family hour had little effect on top-rated programs which children watch. They will watch it regardless of the time period in which it is placed, which has some implications farther down on the degree and the extent to which parents regulate their their children, They don't regulate their children, in general.

Mr. **Van Deerlin.** Give me that again, willl you?

Mr. **Hanneman.** Yes, sir.

The finding is, essentially, that children will watch their own top-rated programs, and parents allow them to watch their favorite programs, regardless of whether or not it falls in the family hour period. What that relates to is the degree to which parents regulate their children.

I have a few comments I can make about that in a second, or we could go into that.

Mr. **Van Deerlin.** Or the degree to which children regulate their parents.

Mr. **Hanneman.** Well, you know, there is some evidence that that happens to a considerable degree. OK.

In our national comparisons across time zones, particularly comparing Eastern and Pacific against Mountain Standard and Central Standard time zones, we found few differences among children's TV behavior, except that, in the Central Standard and Mountain Standard time zones, where the family hour ends at 8 o'clock, millions of children are still watching beyond 8 o'clock, in comparison to EST and the PST zones.

Finally, let us look at parental control of children's viewing. We found the family hour did not limit children's television viewing to 7 and 9 p.m. It just provided them with different content. We found most parents still had no formal rules about regulating their children's behavior, nor did the family hour, comparing before and after the family hour, affect the type of rules that the parents told their kids, in terms of television behavior.

Now, whether or not the family hour affected viewing patterns, we found the majority of adults said that the family hour did not affect their viewing behavior at all, and, in fact, 91 percent of the parents claimed that their children's viewing patterns had not changed whatsoever.

Yet, compared with last year, that is, prior to the family hour, more families with children, we found—significantly more, in fact—were watching television as a unit, as a family unit.

We also looked at: Was the public aware of the family hour? Unfortunately, or fortunately, I guess, depending upon your persuasion, they are not. Over 50 percent of the LA audience was still unaware of the family hour, and by April 1976, 38 percent were still unaware, and these statistics reflect, pretty closely, the national TV Guide data.

We find many more families with young children, as may be expected, were aware of the family hour than adults without children.

Finally, the major complaints about television: 51 percent of the LA people had no complaints. OK. The major complaints centered on the lack of program diversity, the high frequency of commercials and the great amount of violence.

Now, I should point out that sexual explicitness and permissiveness were not considered to be significant problems in the LA audience. This is either comparing families with children against those without children, or going across different educational or age strata.

Finally, the major complainants about television, we found, came from individuals who were not parents. They came from individuals who were not aware of the family hour, and they came from individuals who view less than the average number of television hours per day on a national basis.

Mr. **Waxman.** Could you repeat that?

Mr. **Hanneman.** Yes. We found that the major complainants about television—this is on page 2, item 6 [see p. 307]—the major complainants about television are those individuals who were not parents, and they complained, primarily, about being disenfranchised and the lack of programing in the early evening for them, I should point out.

Second, the major complainants were those who were unaware of the family hour.

Third, the major complainants were those who view a lot less television than the national average, as might be expected.

Incidentally, the least amount of criticism comes from people who are aware of the family hour, particularly criticism about violence and sexuality. It is almost as if the family hour creates a kind of a smoothing effect of critics.

That is my brief summary of the data. I guess I would like to open this up, now, to questions about these data, or some other issues that are related to the data that I could go into.

[The statistical data sheet referred to follows:]

THE FAMILY HOUR: A SOLUTION IN SEARCH OF A PROBLEM

EXCERPT

The following comparisons reflect public opinion from 324 randomly selected Los Angeles area (television's second largest market) residents, before and after the inception of the Family Hour. The findings below represent significant statistical differences.

I. Does the Family Hour Work?

Since the institution of Family Hour, there has been an increase in the proportion of the television audience that believes programming between 7:00 and 9:00 p.m. *is* suitable for children.

Families *without* children were considerably less satisfied with last fall's programming than families *with* children.

Despite some perceived changes in the amount of violence shown between 7:00 and 9:00 p.m., the audience was still sharply divided as to whether television programming is too violent.

II. When Do Children Watch Television?

With or without Family Hour, general family shows attract youths aged 2 to 11, and to some degree, youths aged 12 to 17.

Children are *not* most attracted to violent programs.

Family Hour has had little effect on top-rated programs which children watch.

In a national comparison across time zones where the Family Hour periods differ, there were few differences among children's television behavior. In the CST and MST time zones, millions more children than elsewhere continue viewing well after the end of Family Hour.

III. Parental Control of Children's Viewing

The Family Hour does not limit children's television viewing to those hours between 7:00 and 9:00 p.m. It merely provides them with different content in that time period.

Most parents have no formal rules about when and what their children watch. Nor has the Family Hour affected parental regulation of their children's television behavior.

IV. Is the Family Hour Affecting Viewing Patterns?

The majority of adults interviewed said that Family Hour had not changed their viewing behavior.

Ninety-one percent of the parents interviewed claimed that their children's viewing patterns had not changed.

Yet, compared with last season, more families with children are watching television together as a family.

V. Is the Public Aware of the Family Hour?

As of the end of October 1975, over 50 percent of the Los Angeles audience interviewed was still unaware of the Family Hour. By April 1976, 38 percent were still unaware.

Many more families with young children are aware of Family Hour than those without children.

VI. What Are the Major Complaints About Television?

Fifty-one percent of the respondents had no complaints.

In both October and July, the main complaints about television were centered on lack of diversity, the high frequency of commercials, and the great amount of violence depicted.

Major complaints came from individuals who were not parents; those unaware of the Family Hour; those who view less than the average amount of television per day.

Sexual explicitness and permissivness are not significant problems with the Los Angeles audience; in October, 85 percent felt television was not too sexually explicit between 7 and 9 p.m., and similar percentages hold after 9 p.m. Sixty-five percent in July and 79 percent (71 percent after 9:00 p.m.) felt television was not too permissive. There were no significant differences among families with or without children. However, those unaware of the Family Hour were significanlty more negative about television content.

An analysis of these data, as well as A. C. Neilson data indicate little difference in children's television viewing since the inception of the Family Hour. And, considering the diverse Los Angeles television market, one notes that children still have considerable amounts of nonfamily programming available to them during the 7:00–9:00 p.m. periods from the independents, PBS outlets, and from cable operators. This indicates that besides quieting criticism, Family Hour has changed little except the attitudes and behaviors of nonfamily respondents—it has disaffected this group significantly.

Mr. **Van Deerlin.** Have you compared this with similar studies elsewhere in the country?

Mr. **Hanneman.** Unfortunately, there are no similar studies elsewhere in the country, with some minor exceptions: One being the TV Guide data, which is merely quantitative data. It is counts of people viewing and not viewing, and it centers that data focused on issues, like: Do you like the family hour? Do you think it is a good idea? Most people do think it is a good idea.

Mr. **Van Deerlin.** I see you have titled this study, "The Family Hour: A Solution in Search of a Problem."

Mr. **Hanneman.** Right.

Mr. **Van Deerlin.** Is there a real point to that, or is that a bit of flippancy?

Mr. **Hanneman.** No. There is a point to it, both based on my interpretation of the data, and based upon the comments that we go from the respondents, these 324 people. That is, that the major concerns of the family hour—the ostensible concerns, I should say, the violence, the permissiveness, and sexuality are not really major concerns, with the exception of violence; but, then, when I turn that around and say:

OK. You have the family hour. You have the kind of programming that is of general family fare in the first 2 hours of the evening, do your kids then watch those 2 hours? Are they not permitted to watch other hours, and so on and so forth?

We find no effect. In other words, the general effect is that kids are still watching whatever they want, which is exactly what they did prior to the inception of the family hour, if you are looking at it from a parental impact.

Mr. **Van Deerlin.** Your information on the Central and Mountain States is from a Nielsen study. Isn't that true?

Mr. **Hanneman.** Yes, sir.

Mr. **Van Deerlin.** Everything is moved up about an hour in the Middle West and the Mountain States, I guess, because they are hard-working, God-fearing people who turn in earlier.

Mr. **Hanneman.** Well, as you know, the prime time and the family hour are shifted earlier in the mountain standard times and the central standard times.

Our interest was: Well, if this is the case, and if the family hour there is from 6 to 8 p.m., do kids, miraculously, especially that 2 to 11 year old group stop watching at 8 o'clock? And, of course, they don't. They continue watching, in the millions, until around 11 o'clock at night.

Mr. **Williams.** I might add just a note to this.

We conducted a study this summer in the city of Torrance, Calif.; a large city in the south bay area here.

We were particularly interested in studying the viewing habits of preschool children: How young are children when they first start using television, and what are the regulatory styles of the parents when children first start viewing?

Very interesting to us, similar to the other two items that Dr. Hanneman mentioned, is there still was a number of people who either had not heard of the family viewing period, or had only a very fuzzy idea of what it was. It just simply hasn't had that much public penetration, from what we can see.

Mr. **Van Deerlin**. I am surprised it is as high as you indicate, the people who know about it. That is probably more people than know who their Congressman is, in most instances.

Mr. **Hanneman**. That is almost a year after its announcement, too.

Mr. **Williams**. I might add to that. In the Torrance study, if you asked the parents what they were worried about, with the very young children watching TV, and incidentally, many of them are watching it at about the age of 1 year; even controlling the set, to some extent, right after 1 year, where the set is simple enough to work.

But, the parents are complaining, first of all, about a lack of variety of things for the children to see. They complain about violence but, again, there wasn't much evidence of complaint about sexual explicitness.

A final point on the Torrance study, and these will be written up this fall, is that the question of whether parents have—these parents had a regulatory strategy for guiding their children's use of TV. It resulted in a mixed bag of answers.

It doesn't seem to us, based, at least on the Torrance data, that parents here are approaching the use of TV in any generally consistent way, other than a kind of a laissez faire approach with the kids. It seems to me the kids are probably watching it from the edge of the playpen, and anything that keeps them quite, they will leave the set on.

Mr. **Van Deerlin**. How did you ascertain their concerns? Did you give them a list of things that they might be concerned about and ask them to check——

Mr. **Williams**. This was a fixed response questionnaire where we would ask them what their most major complaint was. What did they like best about television? What did they like least? Then, there was a list of things that they could choose from that were discussed with them on the telephone.

However, in many of these questions, they did have the opportunity to add things if they wanted to, although they seldom did.

Mr. **Van Deerlin**. Mr. Waxman.

Mr. **Waxman**. Yes. Thank you.

Your Torrance study is a different study than the study you have talked to us about here?

Mr. **Williams**. Yes, sir. The Torrance study was not a study, specifically, concerned with the family viewing period. It was a study just recently completed for the purpose of looking into viewing habits of preschool children.

Mr. **Waxman**. Tell me about your family viewing study. You have a sample of around 300 people?

Mr. **Williams**. I will defer to Dr. Hanneman on that, since he directed it, if I may?

Mr. HANNEMAN. Yes, we did. We had 160 before, and 160 afterward, and somewhat less than that in April. They were interviewed at various times.

Mr. WAXMAN. From what geographical area?

Mr. HANNEMAN. From the standard metropolitan statistical area of Los Angeles.

Mr. WAXMAN. How did you arrive at your sample?

Mr. HANNEMAN. It is a random probability sample, within the laws of sampling theory, and so on.

Mr. WAXMAN. And, within the laws of sampling theory, is that a sufficient sample to reach conclusions about Los Angeles?

Mr. HANNEMAN. Oh, yes. It is more than adequate.

Mr. WAXMAN. It is?

Mr. HANNEMAN. Yes. What happens is you get—I should point out, that is a much larger sample than A. C. Nielsen and any of the rating services use. It gives you a precision level, I would estimate, at around 4 to 5 percent, which is adequate, which is—What that means is that when you get a statistical answer, like I said 91 percent of the parents said that their children's behavior had not been affected, that means that statistic is accurate to within plus or minus 5 percent, based on the sample size, like that.

When you have a random area of probability sample, like we had, it means that every race, ethnic group, and sex is represented in proportion to how they are represented in this area.

Mr. WAXMAN. How would you accomplish that, if you are talking about random geographically?

Mr. HANNEMAN. Because, you are picking areas where different people live.

Mr. WAXMAN. I see.

Mr. HANNEMAN. So, if, say, 100,000 people live in area A and 50,000 in area B, twice as many of your people come from area A.

Mr. WAXMAN. How many people would be in your sample of the west Los Angeles area, generally speaking?

Mr. HANNEMAN. If we did just the west Los Angeles area?

Mr. WAXMAN. No. Not if you did the west Los Angeles, but how many people reflected your actual sample in the west Los Angeles area to give you a picture of what the west Los Angeles area might well have thought about family viewing?

Mr. HANNEMAN. Right.

Mr. WAXMAN. Out of 160 in the total Los Angeles immediate area.

Mr. HANNEMAN. Yes. That is hard to answer; 25.

Mr. WAXMAN. It would be proportionate with the population, wouldn't it?

Mr. HANNEMAN. It would be proportionate with the population. I am trying to give you an exact answer. You know, I can tell you that back there.

Mr. WAXMAN. The proportion is the total population. Is that the figure that you used?

Mr. HANNEMAN. Yes. You take the total population in the whole metropolitan region, and then you sample out of the——

Mr. WAXMAN. You interviewed adults?

Mr. HANNEMAN. Over 18, correct.

Mr. WAXMAN. Over 18. You didn't look to the total of the population in a certain geographical area that was over 18, but took the area—the reason I am asking the question is that you have some areas with a lot of children.

Mr. **Hanneman**. Yes.

Mr. **Waxman**. Some areas, like the Fairfax area that I represent, with a lot of older people, and not all that many children.

Mr. **Hanneman**. Yes. Well, indeed, we had a second sample of about 100, the second time around, where we deliberately oversampled in areas like the valley and other areas where we identified there were a lot of families with young children. These results were factored into these results. OK? And, we compared them to our larger sample for statistical differences.

Mr. **Waxman**. Now, could I ask you questions about your valley sample, as opposed to your Hawthorne-Torrance sample? Do you have those kind of statistics available?

Mr. **Hanneman**. Yes. Yes, they are. I do not have them, but they are available.

Mr. **Waxman**. I see. So, I could ask you, but not right now?

Mr. **Hanneman**. Yes.

Mr. **Waxman**. Because I would be interested just to take my own experiences and my own notions of Los Angeles to see how they are reflected in your sample, which would, one, either hold up your study to some question, or my prejudices to some questions.

Mr. **Hanneman**. Sure. Well, the difficulty is, and you are hitting on something, that the whole notion of funding communications research, and it is the notion of: Should the Federal Government be involved?

Now, thank goodness, the National Science Foundation has launched a communications policy program, but, in general, the Government, probably for good reasons and some bad reasons, is very loathe to sponsor this.

You are doing it with limited funds. You know, you are using the samples as you can.

Mr. **Van Deerlin**. Since you brought the question up, was there any special funding for this study?

Mr. **Hanneman**. No. We generated these funds all ourselves, within the school.

Mr. **Van Deerlin**. I see.

Mr. **Williams**. Out of the operating budget of the school.

Mr. **Waxman**. Now, I want to ask you some questions about the conclusions that you have reached.

I gather what you are telling us about family viewing is it has made people happy and feeling comfortable that there is such a thing, but there is nothing substantive there. Is that correct?

There is no substantive change from before family viewing to with family viewing, except a lot of people feel better about it.

Mr. **Hanneman**. Well, it depends on how you measure substance, and the way you phrased that question, yes, that is true.

What it has done is it has kind of generated an effect that says, "Hey, somebody is doing something about the shows on television." For the people who are aware of the family hour, they think much more positively now about television.

Mr. **Waxman**. In terms of the amount of violence, or the kinds of shows that children are watching, it has had no effect. Is that correct?

Mr. **Hanneman**. They are watching, essentially, whatever they want to.

Now, we are going to see some differences, only because, as you might expect, if most of your viewing time for a young child, say, occurs between the hours of 7 and 11, and half of those hours now are less violent than they used to be, then they are going to get, overall, somewhat a less dosage of violence.

Mr. **Waxman**. Did you measure whether, in fact, there is less violence in the 7 to 11 time frame, or is that an assumption you are making because you have heard that those are family hours?

Mr. **Hanneman**. No, no. We did not measure content, but George Gerbner has measured content, and I believe his conclusion was that there was not significantly less violence during the family hour.

Mr. **Waxman**. There is not significantly less violence during the family hour?

Mr. **Hanneman**. Yes, than previous seasons.

Mr. **Waxman**. I see. Has he measured whether there is more violence on TV after the family hour, from 9 and thereafter?

Mr. **Hanneman**. I believe he has, and I do not know the conclusion to that.

Mr. **Waxman**. I am informed that it is the same as it was before.

Mr. **Hanneman**. Yes. That is my interpretation, too.

Mr. **Waxman**. So, there is more violence now during the family hour than there was before, and about the same——

Mr. **Hanneman**. No, sir. No, sir. It is about the same, or a little less, but I believe his conclusion was not significantly less, during the family hour.

Mr. **Waxman**. Why don't you say it for the record?

Mr. **Pearce**. Gerbner discovered that violence was substantially down in the family hour, but was not down at all in the period from 9:00 until 11:00.

Mr. **Williams**. I am sure the committee is well aware there are a lot of opinions about how valid those violence indices are. I always hesitate to get into conversation about them without qualifying it with that remark.

Mr. **Waxman**. I am glad you did mention that factor.

So, the greatest success, then, of the family hour is a public relations success, isn't it?

Mr. **Hanneman**. I would say so, but, here is another success, and I don't know if you can say greater, or less than great, and that is that it provides, between 7:00 and 9:00, general programing fare, and, you know, if our data have any national representativeness, more families are watching television as a unit.

Mr. **Waxman**. That was an interesting statistic. Why do you think that is the case?

Mr. **Hanneman**. Well, I can only speculate on that. Okay?

I would speculate that parents feel more comfortable with that kind of fare and watching it with their kids, or, perhaps, they are setting modeling examples—role modeling examples. I mean, certainly there is no previous data to indicate that kids and parents watch TV together at all.

There might be another explanation. That is that parents were watching with their kids the fall season to find out what exactly was going on during the family hour, because so much was ballyhooed in the press about, "Hey, these are the types of programs you will be getting." Maybe they were just observing for themselves.

Mr. **Waxman**. How much more are we talking about? How much of an increase in the family viewing together during the family hour?

Mr. **Hanneman**. We are talking about 55 percent of our families with children in spring, saying, they watched TV together versus 77 percent saying that in late October.

Mr. **Waxman**. Did you measure if there is more family viewing after 9 o'clock? The family viewing together after 9 o'clock?

Mr. **Hanneman**. No, we did not.

Mr. **Waxman**. So, it could be that the increase in unemployment could have something to do with the family watching television because more people are at home.

Mr. **Hanneman**. Sure. Oh, yes.

Mr. **Waxman**. They could be watching more television together at all times.

Mr. **Hanneman**. Yes.

Mr. **Waxman**. So, that would——

Mr. **Hanneman**. It could also be that——

Mr. **Waxman**. Then, wouldn't that challenge your assumption that they are, one, interested to see what is on during the family hour period, or, two, they feel more comfortable watching with their children because of the tyye of fare that is on?

Mr. **Hanneman**. Yes. I was providing hypotheses for research purposes.

Mr. **Waxman**. Do you retract your hypotheses, now that I have mentioned this other possibility?

Mr. **Hanneman**. Well, I will entertain that as a rival, plausible hypothesis. We can set it up there and test against it.

Mr. **Waxman**. Well, I think that is just one of the most fascinating parts of this thing. I would be interested in having you conduct further research on it, because, aside from the questions of what is on television, the notions of family doing something together—anything together, I think, is a big plus.

Mr. **Hanneman**. Well, there is a related factor, that which I brought out. That is, when you are trying to measure what the impact, or the effect, of the family hour is: What is your dependent variable? All right?

One of the ones that we looked at was: Does the family regulate the child's television behavior more, or interpret it more?

Mr. **Waxman**. Would you say that again?

Mr. **Hanneman**. Does the family control the child's television behavior more, especially younger ages?

Mr. **Waxman**. If they are watching together?

Mr. **Hanneman**. No, no. Regardless of whether they are watching together: Point out instances of justifiable violence versus unjustifiable violence, or give them time constraints, or access constraints—You can only watch channel X versus channel Y—that kind of thing.

The family hour had absolutely no effect on that, which is, I find, surprising.

Mr. **Waxman**. It had no effect on the parental control at all?

Mr. HANNEMAN. Regulation of kids. See, one of the things that we don't know, at all, is how parents—what kind of regulation parents prefer. I mean, we have got a family hour ruling. We have kind of de facto policy pressures, such as ACT, pressures on the FCC, and the 1974 Children's TV Guideline, and so on and so forth; but, except for advocacy groups, you have no opinion, at all, from the American public on, you know—in general, how they want television regulated, whether they want it at all, and how they regulate it.

Mr. WAXMAN. Have you asked for this information in any of your polls?

Mr. HANNEMAN. Oh, yes. We did, and some of those things I have; but, I mean, we have nothing on a national basis that you could say is representative of Kansas City; not this week, of course.

Mr. WAXMAN. You say you have asked these questions—Am I correct in assuming, from your testimony, that the people who are most unhappy about television violence are nonparents?

Mr. HANNEMAN: Yes. That is true.

Mr. WAXMAN. Are parents just generally satisfied with the kind of programing they get on TV?

Mr. HANNEMAN. They voiced fewer complaints.

Mr. WAXMAN. Fewer complaints?

Mr. HANNEMAN. Yes. But, remember, that parents were also more aware of the family hour.

Mr. WAXMAN. They are more aware?

Mr. HANNEMAN. So, you have got kind of a circular correlation, you know. Those aware of the family hour have less complaints about TV, and also happen to be parents.

Mr. WAXMAN. Because they could be more satisfied with TV than nonparents because they have got an extra benefit out of it. They get a babysitter.

Mr. HANNEMAN. They get a babysitter out of it. I mean, what, in fact, was speculated in the press, we found some evidence for, and that is that the majority of nonparent adults were disenfranchised by the family hour; totally disenfranchised.

Mr. WAXMAN. They felt that way?

Mr. HANNEMAN. Yes, sir.

Mr. WAXMAN. Did they give examples of how they felt disenfranchised? If there were no substantive change in any of the progaming——

Mr. HANNEMAN. Yes.

Mr. WAXMAN. Oh, they did?

Mr. HANNEMAN. Yes. Well, I mean, examples in the sense of they complained, somewhat caustically at times, about the lack of diversity for them before 9 o'clock and even after 9 o'clock, because it does tend to polarize programing. OK?

They complained, in essence, about being forced into the 9 o'clock region, which is an infringement on their 14th amendment rights, in my interpretation.

Mr. WAXMAN. I assume they didn't say, "14th amendment"?

Mr. HANNEMAN. No. I added that. Though, we talk about protection of children's rights.

Mr. WAXMAN. Did they complain that there was not enough action?

Mr. Hanneman. No. They did not complain that there was not enough action.

Mr. Waxman. Did they give any suggestion of what they would have liked to have seen more of, if they had their opportunities?

Mr. Hanneman. No.

Mr. Waxman. I think that is a fascinating study. I don't really quite know what to make of it, yet, and maybe——

Did you find that the Torrance area was less aware of the family hour than other areas of the city?

Mr. Hanneman. The most aware people of the family hour were the middle classes, believe it or not.

Mr. Waxman. The middle classes?

Mr. Hanneman. The middle income groups, I should say.

Mr. Waxman. Across all geographical places?

Mr. Hanneman. Yes, and I can type that, but it is across middle income groups, and what is interesting is that there is years and years of research that said that those groups are also the ones that regulate the children's TV behavior the most.

Mr. Waxman. Did you find a difference among parents across economic lines in their attitudes toward children's viewing? Did you find, for example, higher income and middle income parents having more restrictions over the viewing of their children, as compared to lower income parents?

Mr. Hanneman. You would suspect that. That was not the case. The only place where that holds is that middle income people regulate their children's TV behavior a lot more than lower income people or higher income people.

Mr. Williams. Or, they may think they do and really not know all of the results, because they are usually more prone to be multiple set homes when they are in the upper middle class or middle class than in the lower socioeconomic classes.

Mr. Waxman. Even in the evenings?

Mr. Williams. Yes.

Mr. Waxman. They don't change the number of TV sets between morning and evening.

Mr. Waxman. No, no. I thought that you were saying that their parents were more likely to—you said, set homes. I am——

Mr. Williams. No. I am saying, if you have these middle class parents who claim to have regulation strategies for their children it may be that in their homes it is hardest to enforce that because it is a multpple set home, and unless they are in the child's bedroom, or wherever the extra TV sets are, they really are not enforcing that.

Mr. Waxman. I see. There is no way for you to measure that?

Mr. Williams. Well, there probably is. That requires much more extensive, you know—going into the homes and research, and so on, rather than telephone interviews or brief doorstep interviews.

Mr. Waxman. But, the upper income and the lower income had less supervision over the television viewing by their children?

Mr. Hanneman. Correct. Traditionally, and this data confirms that, the lower income people are the most satisfied with TV. OK? They have the least complaints, in general.

Mr. Waxman. Well, are the upper income satisfied with TV?

Mr. **Hanneman**. No. They don't watch TV as much. If they are disatisfied with TV, they will turn away, and, in fact, one of our interesting findings was—and I am talking about complainers—the people who were complaining were the people who decided to turn to other media, and were much heavier users of radio and print which, to me, suggests a great strategy for a producer.

I mean, if you want to lure those people back and build an audience base, you try to build some programing for those kinds of people.

In other words, you take that as an opportunity rather than a problem.

Mr. **Waxman**. What economic class of people are you talking about? Or, does that cut across economic class?

Mr. **Hanneman**. Well, I am talking about the people who had the complaints, which are your people who didn't have children; primarily, middle class people and people who view less than the average amount of TV per day. But, we know why they view less than the average amount of TV per day. They are reading magazines and are listening to the radio more. They just don't think there is content there to suit them.

Mr. **Waxman**. What economic lines would that be? Middle class, primarily?

Mr. **Hanneman**. No. I won't say that. Yes, I will say that. I am sorry. Yes, middle class.

Mr. **Waxman**. Upper class, what do they do?

Mr. **Hanneman**. Upper class, traditionally, watches less television and shifts more to PBS, so you have got a whole different consideration.

The upper class, also—you talk about West LA—has access to pay TV and the cables channel Z.

Now, if you want to get into it, you know, the technical problems of the family hour are as follows:

In a large proportion of the LA homes, regardless of what you say about control of over-the-air television, children still, and families, have access to R rated, and in some cases, X rated, fare—I shouldn't say X rated—R rated fare on pay TV. They get independents on cable TV, which are still exempted for another year—they are syndicated programs—from the family hour rules.

So, in a large proportion of the homes, the cabled areas, which are primarily in affluent areas, and pay TV homes, which are affluent areas, you have got such a diversity that the family hour is meaningless, anyway.

Mr. **Williams**. It seems to me that that could be symptomatic of a larger problem. If you have increasing regulation of content or control of content, that families will be less prone to cope with the problems, themselves, and try to rear their children in a way so that they have some media tastes, and what is going to happen here, over the next 20 years is that there are going to be more and more alternative technologies for delivering entertainment into the home that cannot be regulated, like over-the-air kinds of braodcasting.

If when we get to an era of economically feasible video disc for the home, you can have all of the rules you want in industry, or Government, of FCC, on over the air and it really won't make a bit of difference.

Mr. HANNEMAN. The byproduct of that is that it, unfortunately, disenfranchises, ultimately, the poor people, who do not have access or cannot afford cable or video discs, say, in a few years, or whatever.

Mr. WAXMAN. But, those violent and heavily sexually oriented kinds of entertainment that will be coming into the home may well come to the pay TV, anyway.

Mr. HANNEMAN. That may be true.

Mr. WAXMAN. So, we might well find that we are going to make wealthy young people more decadent and the lower income——

Mr. HANNEMAN. Yes. Yes, sir. I grant you that, but the other side of that is if there is an erosion in the audience base for over-the-air television, then the production support will not be there for quality programing for that same audience, ultimately, and that will be a serious problem as well.

Mr. VAN DEERLIN. We surely thank you for sharing these findings with us. They perplex as much as they enlighten.

Our next witnesses, representing the Catholic Archdiocesan Communications Commission, are the Reverend Fathers John Urban and Anthony Scannell.

Father Urban.

STATEMENTS OF REV. FATHER JOHN URBAN, CHAIRMAN, CATHOLIC ARCHDIOCESE, LOS ANGELES, CATHOLIC ARCHDIOCESAN COMMUNICATIONS COMMISSION, AND FATHER ANTHONY SCANNELL, A CAPUCHIN FRANCISCAN AND VICE CHAIRPERSON

Father URBAN. I would like to introduce myself as the chairman of the Communications of the Catholic Archdiocese here in Los Angeles.

I have also served for 14 years as the director of broadcast communications for this archdiocese, as well as west coast representative of the Film and Broadcasting Commission of the United States Catholic Conference, working out of Washington and New York. In this last capacity, I served as a consultor to writers, producers and network program practices division people in the west coast area.

In consultation with the various organizations of this archdiocese, I would recommend continued support of the family viewing concept with, however, the following concerns for its future:

In our opinion, the broadcasters, while avoiding gratuitous sex and excessive violence in the 2-hour time period, have been content to present programs in this prime time of limited quality. They have, for the most part, utilized inexpensive formats which are financially rewarding, but qualitatively poor. In other words, the ideal and philosophy upon which the family viewing concept was based, in our estimation, is an economic windfall to the major broadcasters without a commensurate emphasis on creativity.

Second, the creative community needs to be encouraged to produce material designed to upgrade the cultural values of our society.

Sex and violence are a part of the human condition, and their portrayal in drama, complicated by the pluralistic philosophies in our society, can be beneficial if the motive of exploitation is discouraged. The broadcasters should recognize that this subject material presented with discretion and sensitivity might be included in the family viewing time period. The burden, however, rests on the creative community to strive for greater quality and less exploitation.

Third, the family viewing philosophy is a step in the right direction, if the broadcasters see the present experiment to be an initial phase which will eventually influence the entire broadcast day. The fear is that by isolating their obligations to avoid excessive violence and gratuitous sex during the family viewing period, broadcasters will assume that they have fulfilled their community obligation and present in the remaining hours counter-productive programing.

In conclusion, we have the beginnings of a modus operandi in broadcasting which, in theory, is valid, but in practice has great complexities in administration and value judgments.

We recommend that broadcasters utilize program advisory groups from the community in an effective way. These groups should not be self-serving. Should the broadcasters decide not to follow the recommendations of their advisory groups, they should be accountable to some agency—governmental or otherwise—to justify their decision. Checks and balances are required in government. Because the people, at least technically, own the broadcast spectrum, a more precise and practical system of accountability to the public should be provided by the licensee.

That, Mr. Chairman, is the conclusion of my formal comments.

Mr. VAN DEERLIN. Thank you, Father.

Will you proceed, then, Father Scannell?

Father SCANNELL. Certainly.

STATEMENT OF FATHER ANTHONY SCANNELL

Father SCANNELL. I am Anthony Scannell, a Capuchin Franciscan and vice chairperson of the Los Angeles Archdiocesan Communications Commission.

I am also president of the United States Catholic Association of Broadcasters and Allied Communicators called UNDA, the Latin term for the broadcast signal. UNDA-USA is part of the Vatican's worldwide broadcasting association.

I am also president of the Franciscan Communications Center here in Los Angeles, which we abbreviate as FCC, but there is no similarity.

You know, my remarks could be misunderstood and could get me into some trouble with some of our bishops, because I am going to express some disagreement with the wording of the Statement on the family viewing policy of the television networks issued by the administrative board of the United States Catholic conference, in September of 1975, and prepared for them by the communications committee of that conference. I have brought copies of that statement with me.

Because of the negative tone of that statement, I think it is important that you, the FCC and the broadcasters do not get the impression that the Catholic church, with one voice, is against the family viewing policy. That is why I, as a part of a pluralistic input to you, want to stress some positive aspects regarding family viewing as related to sex and violence on TV.

The USCC statement declared that the proposals contained in the FCC report of February 19, 1975, and the networks' family viewing policy were, quote, "unacceptable." Our commission does not find these so unacceptable, so I will clarify.

The United States Catholic conference statement objected to the closed doors manner in which the family viewing policy was decided. It stated, and I quote, "Self-regulations must be open, accountable, and cooperative between broadcasters and the public they serve," close quotes.

We agree with that, but we want to be more positive and insist that the public has even a responsibility to offer input in forming the policies, criteria, and guidelines for the decisions regarding program content, which decisions are the right and the responsibility of the broadcasters themselves.

If airwaves really belong to the public, does not that public, through organizations which represent its pluralism, have a right to influence the policies and criteria the networks use to make decisions regarding sex and violence in programing? Some broadcasters, especially on a local level, have advisory committees, but many of these are merely for public relations purposes, not to help make policy regarding program content.

We exercise this responsibility through government, of course; but, that action is more after the fact, legislative and negative in the sense of being restrictive, as well as the last resort.

We want to exercise a responsibility that is more positive, cooperative, preventive, before the fact, and hoepfully, making legislative action unnecessary.

I realize this is a tricky area. We certainly aren't calling for censorship on the part of the public, but we want to exercise a responsibility toward policy which decreases the steady diet of excessive violence and gratuitous sex, while allowing the broadcasters their freedom and the creative community theirs.

The Bishops' committee's statement put little faith in the broadcasters to regulate themselves. They said, and I quote, "The core obstacle to effective self-regulation in the broadcast industry is its complete domination by commercial interests." We are unwilling to be so negative. We are willing to express some confidence and trust in worthier motives and a sense of responsibility on the part of broadcast executives, as well as of Chairman Wiley, whose discussions led to the family viewing policy.

But, we are not naive. We feel the public has already been betrayed by the movie industry, whose self-regulatory code and ratings has lost the family viewing public and its trust. The fact that the television industry, in its first year of family viewing, has allowed the overall rate of violent episodes per program to reach the highest level on record, may make our trust seem even more naive. But, our trust is conditional.

We are willing to continue trusting broadcasters, national and local, to work toward a self-regulatory family viewing policy if:

They will be open to input regarding policy and criteria from their creative, educational, religious, cultural, civic, et cetera, communities, and,

If such policy and criteria will be put into effect with integrity.

If broadcasters will be accountable to their advisors when their decisions go against such policy and criteria.

If such family viewing policy will be open to constant critic appraisal.

Otherwise, we feel that our trust will be betrayed, and hearings like this will be just the beginning of constant protests by a spectrum from AMA, which agrees that TV violence is hazardous to our health, to the Methodists, whose recent study indicates that the image of women during the family hour was partial and dehumanizing.

Therefore, in saying that we do not find the family viewing policy unacceptable, we are affirming that the present state of controversy is a first step. We do not believe efforts toward an effective family viewing policy should be discontinued.

In fact—and here, I am going beyond the bishop's statement—it is necessary and urgent that efforts be continued, not just to insure enriching programs during family viewing times, but to probe the potential of television to develop mature material to address itself to adult problems, from world hunger and rising crime to the interpersonal struggles to make marriage and family life satisfying and meaningful.

As one very interested party of the pluralistic public, we are willing to help pursue whether and how commercial television can do this even though TV is essentially a family matter, with millions of young people watching it at almost any hour.

Mr. **Van Deerlin**. What you are proposing, Father Scannell, is a vastly expanded system of community ascertainment by broadcasters, which necessarily would be on the level of the licensee, rather than the networks, wouldn't it?

Father **Scannell**. Not only at the time of license renewal.

If there is going to be some kind of policy and criteria for broadcasters to judge the kind of programing they accept from the networks, or even the networks the kind of programing they accept from writers and put into production, we feel that the broadcasters should work with some kind of a group who can discuss the issues.

You see, ascertainment is all right and it is done in various ways, of course, when the——

Mr. **Van Deerlin**. It is supposed to be ongoing, too.

Father **Scannell**. Right, but—this would, particularly, concern itself with the violence on TV and the questions of sex that may come up. That is not as much a problem right now.

So that a group like this would be in continual dialogue with the broadcasters in trying to iron out some very thorny issues, even try to find out whom should we believe. The networks—or I should say the broadcasters—accuse writers of inserting sex and violence to test them; writers accuse networks of putting in sex and violence; the writers then accuse networks of censoring so much of their program. It is so difficult to find this, if you just do it on an ascertainment level.

I am calling for some kind of a group that is going to be in much more direct dialogue with the broadcasters to try to find their way through these thorny issues as they arise, and come to some sort of policy and criteria.

Mr. **Van Deerlin**. Now, these advisory boards would exist on a community wide level, I suppose, to deal with all of the broadcasters in a community rather than station-by-station.

Father **Scannell**. I would think so, yes. The local stations have their own responsibility, of course, and whether it is going to be—I would imagine they have to have some sort of it, but I would guess that on a community level, like here in Los Angeles, a good representative body or council could serve the entire broadcasting community.

Mr. **Van Deerlin**. About how big should such a board be to make itself still workable and not get——

Father **Scannell**. Well, we thought about some of these questions, but we figure that when you get into about whom should be represented, you know, where would we be? Already beginning to design this, and that is where I think it should be done in a dialog with the broadcasters themselves.

So, I don't know how big, in terms of numbers, but I think that the main communities that I listed, including the creative community, should be represented so that you are talking about civic groups, culture groups, perhaps, even law enforcement groups, but trying, truly to represent the concerns of the public.

Father **Urban**. You see, Mr. Chairman, this proposal is not without controversy because the modus operandi of the broadcasters has been to ask certain citizens of the community to participate on an advisory board, but that advisory board is set up to ascertain community problems; that is, to say where the stations will get feedback from the community which may be helpful to them in fulfilling their role as a licensee.

However, it is made quite clear that these advisory groups have no say, at all, with regard to the program content on the particular station, or anything that has to do with the operation of the station, itself.

So, this particular proposal steps upon some very tender feet, because it is assumed that not only will the community advisory group, as I said in my comments, not be self-serving. It is not a matter of pressure groups, or that kind of thing. What are the Catholics going to get out of it? What is the black community getting out of it? The Chicano community, or whatever else?

This, as we know, is going on right now in other areas, but, I am thinking of an advisory group that would have a very serious sense of objectivity about it, still be a good cross section, and be in a position to profoundly influence programing and program content, not the local broadcaster.

Mr. **Van Deerlin**. How do you see this thing set up? How would it be generated?

Father **Urban**. It could be generated, possibly, through a nongovernmental agency like the NAB, if they would be willing to accept this proposal, although, I think I am being a little bit naive that they might be that far.

The other problem being that the NAB, really, does not represent all of the broadcasters. I believe, only about 60 percent of the licensees subscribe to the code.

Again, as Father Tony said, we are presenting the germination of an idea and I would see in this, possibly, a committee being formed with governmental people that would be interested in such a project, and a few key community people to flush out some of these specific ideas.

We believe that there is very little practical accountability to the viewing public except in terms of protest from the public on an ad hoc basis because of a certain program, et cetera, or something like that, rather than an ongoing thing.

I have also found, unfortunately, that the advisory groups in the limited sphere that I described at the beginning of my comments usually take form, in the practical sense, right around license renewal time. After license renewal time, they sort of fall back into the background as far as the stations' willingness to take advantage of them, as a group.

In fairness to the broadcasters, of course, if an individual who is on the committee will call, they will be more than happy to listen, but I am thinking more of an ongoing kind of group.

Mr. VAN DEERLIN. Which would have some formal structure.

Father URBAN. Yes. Formal structure and there would be teeth in it. As I said, if the program practices department of the local broadcaster does not wish to follow the recommendations of their advisory committee, then they should have the obligation to justify that, because we are not saying that the advisory committee would be right in all cases; but, they would have to have——

Mr. VAN DEERLIN. The licensee would still be the responsible person, of course.

Father URBAN. Yes.

Father SCANNELL. Some of the alternatives don't look as promising as this.

I think we can also find models, even on the part of some of the stations who do work with community groups, not just for ascertainment, but regarding some of their content policies so that they can be answerable to some of their viewers, even on some national levels.

I think we can find the models for this, and I also think that we will find a willingness, both on the part of—I understand the creative community was very open to this and wanted some kind of input and appreciated opportunities.

Other groups were asking for it, too. I also think that the broadcast industry, itself, would respond to something like this, as long as it does not look like censorship, as long as it is a group that is going to be truly representative and not a pressure group from any one segment of the public.

Mr. VAN DEERLIN. Were either of you surprised by the testimony you have heard from the USC professors on the result of their findings?

Father SCANNELL. Well, in some of these questions—it is hard to find out the exact questions that were asked of families about the amounts of violence, because it contradicts some other studies, too, about the increasing—their school of Annenberg in Philadelphia came out with contradictory evidence, that there is an increase in overall violence.

The question is: How is the question phrased to see if the family perceives this? I think even the danger that some of this have subtle effects on their families and their children that they don't realize.

So, listening to some of it, I was surprised at the statements that were made. I would really like to study that more carefully to find out what questions were asked. How do they perceive violence? And, even when they answer questions about the effect of this on their families, what are they thinking about? What effects do they discern, or how do they judge those kind of effects?

Mr. **Van Deerlin**. Mr. Waxman?

Mr. **Waxman**. I really have no questions. I failed to ask a few points because, I am sorry, I had to leave the room and didn't hear all of your testimony.

What do you think we can do to have parents more involved in viewing habits of their children, to take more of a role in guiding their children? I just think so many of the problems we have today are based on the lack of the family unit; one, being together and serving the purpose that I see for it, and I am sure you see for it, and the lack of parental concern and guidance.

Father **Urban**. I know one thing that we are attempting to do, and Father Tony has been working on this for a fair number of years in his communications operation, and that is, to present courses to people in in viewer ascertainment, mainly the parents and the adults.

How do you develop a critique of broadcasting or of cinema, or the theater, whatever it might be? The basic principles of critique?

Now, that, in turn, would be a springboard by which the parents would then be able to discuss with their children the attitudes and the pros and cons of something like this rather than just watch the program and say, "Well, what else is on?" Or, look at the TV Guide.

So, this is something that I would like to see come about within the framework of our own area, mainly the church area, where we could develop these courses in audience ascertainment for the adults.

Mr. **Waxman**. We had Norman Lear as our first witness this morning, and he, in a very sincere way, said to us, as elected officials, that the Government—people in Government, people who are to lead this country, really have not given the kind of leadership that we must have if we are going to have people think well of themselves in this country and do good things and realize the importance.

I guess my question is a little bit more basic. While, maybe, we haven't given the kind of leadership as elected officials, I see television replacing the parent as the molder of children's notions of the world and themselves. I see morality not coming from the churches any longer, but coming from a TV show, should they happen to have any morality in the show at all. That a whole new generation of people are growing up with fleeting images running across a screen that give them all that they are supposed to have to realize the purposes in life and their view of themselves, and their relationship to the rest of the human species.

I am very troubled about it, even if you had a good critique of the shows.

Have we all been replaced by the television? Has morality and the church and religion and those kinds of things that have molded character and given us some values in the past just been replaced by people living their existences in front of a TV set?

Father **Urban**. I don't think it has been replaced, sir. I think what has happened is that the trichotomy of the church, the school, and the family has now been enlarged to include so many other influences, the major one being mass communications. So, if you want to just take that trichotomy and say, "Whereas, 50 years ago, the church might have had one-third influence, now it might have only one-tenth," let us say. Because of the complexities in our society and modern technology, this is basically what we are faced with. This is also where the responsibility of the licensee comes in, because no longer is he just an entrepreneur of industry, he is a molder of minds for all of society.

Mr. **Waxman**. He is a seller of products. He is the maker of profits, and he will tell you, as most businessmen will tell you, that he has an obligation to his shareholders. Do we expect him to give us this morality upon which we want our children to grow up?

Father **Urban**. No.

Father **Scannell**. But, he has got the obligation to the owners, too, of the airwaves.

The reason I think your point is very important is because it gets to the heart of the matter, because family viewing, ultimately, is the responsibility of the parents and the family together.

All of this concerning the broadcaster is extremely important, of course, because this is the material that will come into the family in such an influencing way, but the fact still remains that all of the latest studies show that television is not the molder of opinions, the former of morality. The family still is, and only if the family is not able, in some way, to fulfill that responsibility, or the morality and the attitudes and ideals and values of the parents, themselves, are ambiguous—and, of course, after that comes the peers and television is somewhere down the line. But, television is not the main molder of opinion and values, even today, of the families.

Mr. **Waxman**. Then, why should we be concerned about what is on TV, if it is not having that impact?

Father **Scannell**. In order to aid the families, because it is— There is no doubt of the fact that it is coming into the home and it has some influence, and that in many families where there isn't any other kind of a good influence, then television does have an effect.

That is why it is so important that we find all the ways possible to aid the family in its responsibility they have.

One thing, besides what Jack mentioned, that many parents are crying for is some sort of prescreening on the part of groups that will give parents guidance in what is coming over television. We have that in the movie industry, as bad as it is, in terms of serving family interests. They are still willing to prescreen their materials and let the critics, on the part of church, education, et cetera, to criticize the programs. Television does not have this on any kind of ongoing policy. I have heard many parents say they wish they knew. You can't judge from the TV guides, nor the promotional material that is given by the industry as to what kind of a program it really is. So, that would be one way that Congress could use its influence in encouraging the industry—the broadcasters—to do this for parents; then, they could get a better guide of what they can allow their children to watch, as well as what is really good and positive.

Mr. **Waxman**. I am sure that could be helpful. I don't know if you were here earlier. The witness right before you was Dr. Hanneman from the School of Communications at SC.

Father **Scannell**; Yes, we were.

Mr. **Waxman**. He mentioned a statistic that may, or may not, be accurate: That more parents were watching television with their children, which I seized upon, because I think if families did almost anything together, it is all for good. I would say that I would rather see a family watch a show that involves mass murder—I guess that is a bit extreme, but at least together. If they were watching something and maybe sharing their notions of it, or having a conversation, or at least sharing an emotion together——

Mr. **Van Deerlin**. I thought of a line. "The family that slays together stays together."

Father **Scannell**. Our—would love that.

Mr. **Waxman**. But, you know, I always thought one cf the best things about "Sesame Street," or some of the TV programing specifically geared to children on public broadcasting was that the shows were entertaining for adults, so that the parents would watch it; because, if the parents aren't interested, they are going to switch it off and the kids aren't going to get a chance to watch it, unless they just leave the kids to watch as a substitute mother—to watch the television as a substitute mother.

Maybe we ought to be concerned about something that is entertaining enough for a family to watch, and if that were to involve a show that had some excitement in it, it may not be such a bad thing, rather than try to measure how mucy excitement there is to the point where we worry that maybe it is too violent.

Father **Scannell**. That is a real challenge. To make programing that is enriching, and it has got to be exciting. There is such a bunch of police shows on the air, now. Now, they are not going to show officers leading little, old ladies across the street. They have got to have some kind of excitement in their programing. If they don't have this kind of excitement, no one is going to watch it.

We realize that, but that is the potential and that is the challenge of television, and we are willing to explore that. You know, we are producers of programs, too, and you know how bad religious programing is, for the same reason.

So, we have got a similar challenge to make it enriching.

Mr. **Waxman**. It is your testimony, not mine.

Father **Scannell**. Yes; I know, and I might as well admit it publicly.

But, this is where we are trying to improve ourselves, too. So, when you say the churches have a role, we believe our programing should—really, get us some gut issues and——

Mr. **Waxman**. We heard an interesting description yesterday of a "Phyllis"—I don't know if you are familiar with the program, "Phyllis." It is a situation comedy and it involves——

Father **Scannell**. Oh, we watch television. We don't pray all day.

Mr. **Waxman**. They were describing a "Phyllis" show where the daughter went away on a weekend with a young man, and Phyllis was concerned that, perhaps, their daughter had slept with the man. She didn't really know how to bring this up and talk to her daughter about it. They were having trouble with the network censor, who thought that this was a show that had too much about sex in it, and they argued that that is wrong. What they were talking about was a show that had problems of communication between the generations.

Now, some of these situation comedies that are very provocative, I would think, lend themselves to some discussion among the generations at home, watching TV, hopefully together, and maybe a searching out of their own values and their own relationships.

Father SCANNELL. That is right, but we find that families find this very difficult.

We are involved in an experiment, preparing for the video disc and preparing materials for families. We have already tested it on video cassettes with families, but we find that it is hard, particularly for the fathers, to share their ideals, their values, and their sentiments with the rest of the family; but, once they get an experience and this becomes part—and here is where some of the churches, I think, can encourage family viewing, and even offer programing, and this, you know, in terms of discs, is going to be another possible kind of material that will be available. But, that kind of sharing doesn't come easily to the American family. It has to be encouraged by as many different groups and expriences, and even training, as possible.

Father URBAN. I would like to back up what you said, Congressman, about the utilization of delicate topics in these time periods. This is what I was reading into my prepared comments.

I think what has happened is that the program practices—the standards division of the stations have just, arbitrarily, said that anything dealing with sex, or dealing with excessive violence is eliminated, without considering the nuances of something that can be very, very productive for understanding and discussion in the family unit.

Mr. WAXMAN. When you talk about ratings, you are talking about not censoring certain programs, but advising the consumer watching the TV what is to be expected if he is going to tune in on the show.

Father SCANNELL. As we do now for film.

Mr. WAXMAN. Well, I think that is an excellent idea.

Thank you.

Father SCANNELL. You are surely welcome.

Mr. VAN DEERLIN. Thank you very much, Father Urban and Father Tony.

Our next witness is Ms. Phyllis Roberts, president of the California American Mothers.

I see that the staff has all feminine witnesses listed as "Ms.," but I presume that someone representing American Mothers could be called "Mrs."

STATEMENT OF MRS. PHYLLIS ROBERTS, PRESIDENT, CALIFORNIA AMERICAN MOTHERS

Mrs. ROBERTS. And I think, after having been "Mrs." for 49½ years, and next year will be my 50th anniversary, that maybe I had better stay with "Mrs." I think I am too old to change.

I am Phyllis Roberts, and I am President of the California American Mothers, and I am here just really to speak on behalf of our children. I think our children are America's far most valuable asset.

With all due respect, I would like to preface my remarks with the observation that I feel like a lone voice crying in the wilderness, appearing as I am on this roster with the group, the Gay Task Force, which kind of bothered me as to some of their comments, and the

Adult Film Association, a group that is showing film in my community, to which we are working against. It is one of those things, and it has been quite an education for me, and I feel very humble being in this particular group.

I was also disturbed, as I was preparing some notes, to find that my friend, Police Chief Davis, wasn't going to be with us, because I think Davis could have given us a lot of good information. And as a mother, and working with our police department in North Hollywood, in our police community council, I know that we need our police to work with us in various problems.

Nevertheless, I am grateful for the opportunity to present some of my views, and I firmly believe that the family is the cornerstone of our American life, and that our children are our most precious national resource. As a parent, I am the parent of two adopted children. I have four grandchildren. There are six children who, for various reasons, got mixed up and messed up in their lives, who came into our home and, for various reasons, made their home with us, and so really, all of the years I have been married, I have had someone's child in my home, and I still have a 13-year-old grandson that I am raising.

And as I see our needs, I feel that the American mothers need to be speaking up with some authority on what is going on.

I think that on the question of our sex and our violence, it concerns me deeply. You know, why do we need to go out with sex and not maybe do it gently, or maybe do it firmly, but do it with good taste. Why does it have to be vulgar, as much of it is being presented on many of the programs? And I think the same thing with violence. This concerns me, too.

You know, if you see a man strike a woman in a picture, knocks her back into a chair, and it is a father, and I am sure these things are happening; but how much better it would be for the child to think that the normal standards would be for father to kiss mother and sit down and discuss it with her, instead of the violence that we see, and of course, we do see violence through our police things, and some of it is necessary, and maybe some of it isn't, but I think we need to be building moral standards for our children.

I am particularly concerned about the use of sex and violence on television during the early evening hours. Someone this morning said, why did we have to say what we should be watching in the 2 hours in the evening? Why wasn't it all day?

Well, all day, I find that by the time I get up and get a grandson off to his school, and I get off to my own business, and I am there all day and pick him up after school and get home and have dinner, that it is very nice for the family still to be able to sit down and look at some television, since we have quite a few places we can choose from, that is not violent. It is things that our teenager can look at and we can look at and still enjoy it together as a famlly and there isn't the violence.

This is a time when parents and children should be able to sit down and enjoy it as a family, without running the risk of being exposed to off-color material, sexual innuendo, and violent acts.

And I am thinking on this sexual innuendo, a show the other evening. My grandson said to me can we look at a certain thing, and we did. The thing ended up with the husband and wife embracing, and the wife said, "Shall we go upstairs?" And the usual looks, and this type of thing, and then she began clearing the table, and the man said to her, "What? Clean the table now?" And she said, "Yes."

My little grandson, who is 13, said to me, "Grandma, what is she clearing the table for? What does she mean?" "Oh," I said, "I guess she just doesn't want dirty dishes left there in the sink," and turned the set off.

But you know, a little later, it is going to mean more to him if he is involved, and I feel that that was unnecessary to have that kind of an ending to what hadn't been too bad a thing all the way through, but why end it with that kind of innuendo? That was the thing I didn't like.

There is a question that television has the power to present a false sense of reality to children. Those of you who are parents know that young children look at TV and they see that it is real life, and I think that is very true of children.

Kids see something, and then they go out and they try to do it. They can't distinguish between facts and fiction. They accept that what they see is the truth, and they are affected by it.

This applies to bad language, and I think bad language is one of the things we need to clear up with television, promiscuity and adulterous situations, as well as to murder and mayhem. When television treats marriage and personal relationships in a friviolous way, children get the impression these institutions are unimportant. When children see violent situations dramatically portrayed on TV, they react with overly aggressive behavior. In fact, some even copy the methods of behavior that they learn from TV.

I feel TV broadcasters made a responsible step forward last fall when the family hour was instituted. Now, at least the American family can count on 2 hours of wholesome television each night. I don't see this as censorship. It is a responsible action that should be commended.

And I am going to say just this, since people have been talking about censoring. In 1967, my community began having many houses of prostitution coming in. We began having these theaters coming in, so we got our city together, and we called a meeting, of which we really could get no response. And different ones, particularly the churches, said it isn't really our business to be in this; it isn't our business to get out and protest.

Now, since 1967, we have our churches taking their turns, because now we have 26 houses of prostitution. Now, we have six places where they are showing adult films. Now, our churches are taking their nights, and they are picketing, and they are picketing to the place that we have gone from 26 prostitution places down to 16. Why? Because they began to see what was happening to our community; that we are bringing in the people we shouldn't be bringing in, and it was doing a thing to our community of bringing it down, and I feel that way with our television; that we don't need to censor maybe 24 hours, but I feel that 2 hours out of the day to ask for film where it is maybe uplifting, it is family relationship together, it is the best time of the day with your children, and that certainly is not too much to ask, regardless of how they go about deciding that it is going to be censored or not.

I was thinking, too, about our censorship. We had the newsracks. Now, when we talk about our Government being a government that has freedom of press and freedom of speech, and we used to have our little fellows in the street selling the press, selling the papers, freedom of press.

The freedom of the press didn't mean the freedom to write filth, and to sell it on the streets to children, and I was never into this thing with the newsracks until one day, I saw some children put a quarter in the newspaper rack in front of our Post Office. A couple of nights later, as I saw those kids go up the street, they went up to the park. A couple of nights alter, I went into a restaurant where that particular paper had been left laying on the table at which I saw, and as we sat down, I said to my husband, "Oh, my gosh. I hope nobody thinks we brought that in here," and I folded the thing up and put it in my purse.

A couple of days later, I was looking at the thing, cleaning it out and thought I would throw it in the fireplace, and I opened it up and began to realize what those kids coming from school had picked up in the freedom of the news racks. They had picked up a paper that was dirty. For one thing, it had six pages of advertising women's pictures for prostitution in the thing.

And since then, we have now gotten out, and we are getting rid of the news racks. Why? Because our own people didn't go ahead, as people of the press, and see to it that news was kept clean that was on the street for the public to view, and if you are not going to keep it clean, then we are going to have to get out on the street and we are going to have to clean out the newsracks and, as you know, Beverly Garland, who happens to be a personal friend of mine, has been working in our community, and you have probably seen her on TV.

Mr. **Van Deerlin**. Where do you live?

Mrs. **Roberts**. I live in North Hollywood. And as you know, North Hollywood has the distinction of printing 75 percent of all pornography that is sold and published in the United States, and that is really quite something.

One of the men making a delivery to my business, which happens to be automotive, and I have been in the automotive business for almost 45 years there, and it is one of those things. He said to me, "I just came from delivering this whole truck load of paper there." He said, "You know, I feel badly every time I go in and I see the paper going into this, when there is supposed to be a shortage of wood and a shortage of wood pulp," but we do have that in our area.

But the public has misused the freedom of the press. You know, by now, we sell on the streets, instead of the press, which is our Times and our Herald and all, which are good papers, this filth for kids, so now it is time for people to speak out.

And I think it is this way with our television viewing. We need to speak, whether it is for one type of a way to give us good viewing or another. Whatever we are going to have to have, I think we need to use it.

So, I ask you now, can anyone be hurt by 2 hours of each night of good family-type entertainment? I have even heard some critics contend that the family hour robs parents of their prerogative to monitor their children's viewing habits. Let's use our commonsense.

The family hour doesn't infringe on parental authority in any way. It is a simple and a valuable aid to parents in carrying out responsibility, to guide their children to wholesome television viewing.

And I do think when we are talking about the family hour, we could also talk about some of the cartoons that are on. I think some of the stuff on Saturday morning is rotten. Because I think it is rotten, I know I have to do something. Because my neighbor thinks it is rotten, she had to do something.

Mr. **Van Deerlin**. Are you talking about cartoons?

Mrs. **Roberts**. I am talking about cartoons and some of the stuff the kids would see on Saturday mornings, so I send my grandson to an art school. My neighbor sends her daughter to a music group. The other little boy is now going to a German school, so we have taken it into our own hands to decide that we will not leave the children with free hours on Saturday morning when they are going to see this.

I also think we have to be very discriminatory about what they are seeing after school, because I have seen some cartoons that I have turned the set off on. I just didn't approve of it, seeing some of the things that are being run, so I don't think it is only in the evening, from 7 to 9 that they could run these things, but I think it is great that from 7 to 9 we would not be subjected to it, and we don't have to be there to turn the set off.

I think it is time producers and writers recognize that the American public wants wholesome TV fare. It is time these creative people accept this as a challenge to produce better programing. Perhaps it is harder to write a clean joke than a dirty one, but it isn't impossible.

The creators of "I Love Lucy" did it successfully for years, and I particularly put this in and thought of it, because the other morning I was home, and Kenneth said to me, "Grandma, will you sit while I look at the show I want to see?" And I said, "Let's see it." It was "I Love Lucy," and I hadn't looked at one in a long, long time, but I couldn't help but think of the comedy that they were able to portray without using filth, and all of them had all their clothes on. That was kind of startling, too.

The networks and stations who subscribe to the family hour provision have recognized their responsibility and acted on it. Now, it is time for producers and writers to do the same.

If all the time and energy that is being expended in attempts to destroy the family hour were to be redirected to the production of quality programs for families, we would have a bonanza of fine entertainment coming into our living rooms.

Remember, we reap what we sow. If television presents a wholesome image of life to the children, it will be reflected in their lives as they grow and mature into productive adults.

Television is a powerful medium which not only can but should be used to support wholesome family values. The future of our country does depend on it.

And gentlemen, I thank you for giving me the opportunity to come and speak before you. The American Mothers, if you don't know, is the group nationally that picks the Mother of the Year for the United States. If you know anything about the Mother of the Year, you know that the mother must be a woman who has not ever been divorced. Her children must be children who have a very good record. They must have accomplished considerably within their years, and it is just amazing what these mothers have been able to send in when they are applying for the position of Mother of the Year.

And, of course, we find that she must be a woman who not only participates within her home, but she must belong to a church or a synagogue, and she must be a mother that is always a credit to her community, where she does community service, and we prefer a mother who has done State service, and, of course, it is great when they have also been involved in some national service.

The Mother of the Year for California this year is a woman that is just a tremendous woman, Mrs. Lothian, a woman who was raised in the Salvation Army work. However, her whole life has been given, and she at one time was in Washington, D.C., in the Capitol Building there, as one of the leaders throughout the world for the oil industry, and she still is a producer of an oil paper, and she is a woman 77, who has such a beautiful background.

And it is a beautiful experience to work with these American mothers, because we are finding what wonderful mothers America has, and we are finding what wonderful, wonderful children are in families, and so this is a real experience, and let's keep America that way.

Thank you.

Mr. **Van Deerlin**. What is the size of the organization?

Mrs. **Roberts**. It is not as big an organization as it should be. I think you will find that the average State, there is maybe a couple of thousand mothers who are involved in it, and we have the 50 States and the two national groups.

The reason I asked to come on to this group was because Dorothy Lewis, who maybe you know is a news commentator; in fact, if you remember when the United Nations was—not a commentator but a news woman I should say. I think you will find that she led the group to raise funds for the United Nations, and under her, I believe they raised around $59 million. She is a woman I happen to know and who happens to live in New York, and so she called me and asked me if I would write in and see if I could be heard; that she felt that the American mothers should be heard; that we should ask for the continuance of some type of family viewing and less violence, and this type of thing in our television programing, so that was the reason that I was selected, because I happen to be the State president, and will be through this year.

Mr. **Van Deerlin**. So it was an organization that began more or less, to select a Mother of the Year?

Mrs. **Roberts**. Yes. This is all we really do, too, except that what we do is to try—we are now starting a program where we are going to be working with young mothers, trying to help young mothers to make evaluations in their home of proper conduct and proper family; getting together and hopefully that whatever their religion may be that they will begin to recognize prayer at the table for grace and prayer within their own family group.

We try to bring the refinement and culture that American families have been known to do, known to have; still have.

Mr. **Van Deerlin**. And you would rather see television, in general, reflect typical family life, than see family life reflect what they see on television?

Mrs. **Roberts**. I would rather see family life be a good foundation of family life than to see it being destroyed with drinking and smoking and cursing and violence, and this kind of thing. I think it is much easier for me to show you that I love you and to have an effect on the child, than it would be if I came up to you and showed you violence and I just feel this with children, although there are people who like these other kinds of things.

I think there is a place for westerns. I think there is a place for mystery. I think there is a place for our police stories, but I don't think we need it when we are getting the children ready for bed, or we just finished the homework from school and we are going to be in for a couple of hours in the evening.

I just feel we need good programing; something that is of value.

Mr. **Van Deerlin**. I will give you now to an outstanding father.

Mrs. **Roberts**, Yes, and I know he is an outstanding man, and 2 years ago, he was very gracious for the mother from his district. I wrote and asked for something from Washington, and he made a beautiful presentation for me for the Mother of the Year, because then I wasn't president. I was the one that was handling the research, and I know how beautiful he can be. I just know that.

Mr. **Waxman**. Thank you very much.

I wanted to tell you how much I admire you, and not just because you said some nice things about me, but you are a woman who has given of yourself; one, to your children and your grandchildren, given of yourself and given of your attention and your love, which I think is so important to children. I think it is more important than anything we show on television is the concern of the parent.

Mrs. **Roberts**. It is,

Mr. **Waxman**. And also, my respect for you to come here and to participate in trying to do things to change what you see around you that you disagree with,

So many people just accept the way things are, without ever raising their voice. I am completely with you on that newspaper rack business. I think it is so offensive to foist upon people who, not by their choice, want to see something on a newsstand rack.

If someone goes into a store to look at pornography, I have ambivalent feelings, but it is their business, but for somebody to thrust upon children vile covers on these newspapers, I am just thoroughly offended.

I am interested in what you have to say, and I want to think through some of these things with you.

If the family is the cornerstone of our foundation, transferring morality from one generation to the next and giving a feeling of purpose to people, if we have a 7 to 9 p,m. viewing hour where the parents let the children watch—I have trouble connecting the family and the concern of the parents to even a parent allowing a child to sit and watch from 7 to 9 p.m., even if it weren't violent and even if it weren't offensive in the two ways we have described; by sex or violence, some of it is just not fit to watch.

The fact that you sent your child to art school speaks more for that child than anything he can watch on television, because it showed that you were concerned about what he was doing.

Parents are not concerned. We heard from these professors from USC. They are not concerned from 7 to 9 p.m., and they are not concerned any time, and children are watching whatever they want, and it is really a joke and an insult to parents to tell them that they should not be concerned because we have a family hour, and they feel relieved that there is a family hour from 7 to 9 p.m., so they don't feel as responsible as they otherwise might feel,

Of course, I don't think there is a cause and effect. I don't think they ever felt that much concern to start with,

We have let television raise our children for us.

Mrs. ROBERTS. I think you are right, and I know people who take a TV tray and put the child's dinner on it and puts him in front of the TV and mother and dad sit at their table, but at our house, I am sorry, everyone comes to the table and everyone bows their head and says grace at my table, and they remain there until our husband is ready to leave the table, unless there is some reason for us departing from the table in the early time.

We have made it a time when we sort of visit. However, because we do have a television in the room, sometimes we will say, well, let's turn on the news, and we have listened to the news, and we do that. But even then, that is sometimes very good, because it brings up a lot of things to talk about after we have listened for a bit, but I think your family dinner time is one of the most important times in your household.

And, of course, different ones have laughed because they have been my guest, and I have said to them, "Now, tomorrow morning, we go to church, and if you wish to choose a church of your choice, I will either go with you or take you. Otherwise, I will expect you to go to church with me." And they have sometimes laughed, but I feel that they are a guest in my home, and this is the way it is, and so this is our pattern. Our family gets up, and we go to church together, and we always have done this together.

We have always felt that Sunday noon was the time the family met together for our lunch, and we have stuck to it throughout the years that we have had our luncheon together, whether it was our own children or other children that were with us.

Another thing I think Americans are not doing, and I have found this so much, and this bothered me; with my son, I don't like football. It is just not my game, but I never missed a football game from the sixth grade through school, but it was always Phyllis that drove, and I know one time the principal said to me when something was going on, I said to him, "Well, what time do we leave?" And he said, "You are not going this time." He said, "You have driven for the last 5 years to every single thing, and Phyllis, for once, we are not going to bother you. You are going to have a rest, because you always drive."

He called me on the phone about the time that they were to leave, and he said, "Well, one of the mothers has failed us. Will you come and drive?" And I do think that families are leaving to much of their kids to anything and anybody else, instead of the parents themselves, because, you know, I think the family that works together, worships together, plays together, stays together, and we have found that. We found that with our children.

Mr. WAXMAN. I think that is a beautiful statement that you have made, and by your example and by what you have to say to us all today, I hope many people will benefit. I think that whether we have a 7 to 9 p.m., family hour or greater diversity of programing, and other kinds of things we can do on television, I think it would be very helpful to have that, but nothing can ever replace you and the kinds of things that you stand for in bringing up children, so I wanted to express that.

Mrs. **Roberts**. We thank you. Thank you, gentlemen.

Mr. **Waxman**. You were a much better witness than Chief Davis.

Mrs. **Roberts**. Thank you.

Mr. **Van Deerlin**. Thank you, Mrs. Roberts.

Mrs. **Roberts**. Thank you.

Mr. **Van Deerlin**. Our next witness will be Mrs. Grace Foster.

STATEMENT OF MRS. GRACE FOSTER, DIRECTOR OF COMMUNICATIONS, 31ST DISTRICT PTA

Mrs. **Foster**. The 31st district PTA encompasses the entire San Fernando Valley and Sunland-Tujunga area and has a current membership of over 104,000.

I also have the privilege at the present time of serving as chairman of Reviewing Stand South, which is a regional committee of the California State PTA, encompassing all the PTA districts in southern California; San Diego, Riverside County, all of Los Angeles County; San Bernardino, et cetera, and that committee deals with movies and television and, as you can tell from the title, Reviewing Stand South.

We have, in fact, refined in California the movie rating system. When it is "PG," our movie reviewers list "PGV" for violence, "PGS" for explicit sex, "PGN" for nudity, "PGL" for obscene language, "PGC" for cruelty to animal scenes, so that our members understand why it is a "PG" picture and what to watch out for.

PTA recognizes that the mass media exert a powerful influence on American life and make a major contirbution to the entertainment, culture, and education of children and youth. Television, for the obvious reasons of its audience size and unlimited accessibility, is easily the most powerful medium.

The PTA is not a censor. We respect and support the rights of adults to choose their own entertainment and educational fare. We also stress, in the strongest possible terms, the need for parents to take the responsibility for choosing the TV programs their children may see. In fact, the 31st district will be presenting on Los Angeles district public television channel, channel 58, KLCS, this fall a program on family TV viewing, and by that, we mean information for parents to help them use television as a jumping-off spot for discussion on items that they see on television.

To better inform parents on current TV fare, PTA's in California are urged to establish TV monitoring committees, according to California State PTA guidelines, and communicate their committee reports to their members via their newsletters and bulletins.

We also urge PTA's and PTA members to communicate their concerns to their local stations, networks, advertisers, National Association of Broadcasters, the FCC and their elected representatives, and we supply resource lists of names and addresses for this purpose.

The national PTA is in the process of developing a project for participation by PTA's nationwide that will be a campaign against violence in TV programing.

As a responsible organization, acting on concerns expressed by our members and leaders, we are doing everything in our power to eradicate that most harmful component of television programing, violence. However, we cannot do it alone. We need your help.

We are not as concerned about sexual innuendos, since, at present, they are presented with some discretion and are not likely to be understood by or to disturb the very young. We don't count rape as sex. We count that as a crime of violence.

But the very young can be and are most harmfully disturbed by violence. The March 1972 Surgeon General's report clearly states:

> The causal relationship between televised violence and anti-social behavior is sufficient to warrant immediate remedial action.

Yet, here we are, more than 4 years later, and not only has there been no remedial action, but the level of TV violence has actually increased in intensity.

Judge Giannini, of the Los Angeles Juvenile Court, state at a 31st district PTA meeting in November 1975, that he finds the violence seen and absorbed by young people via television and movies brutalizes them, blunts their emotions, and desensitizes them to suffering or distress. This removes inhibitions against committing acts that cause suffering or distress.

We realize that the intent of the family viewing time rule was an expression of the National Association of Broadcasters' determination to ameliorate the problem. Cooperation by the networks was a step in the right direction, but we must also be aware that the National Association of Broadcasters' Television Code is a voluntary code not subscribed to by all stations and the provisions of that code are repeatedly violated.

The 7 to 9 p.m. family viewing time is but the tip of the iceberg. What about daytime reruns and movies that air between 9 and 5 p.m.?

The 3:30 Movie, as we monitored it a few weeks ago, it goes from 3:30 to 5 p.m., was the most violent 5 days of programing you can imagine.

What about all day Saturday and Sunday? These hours, when children are not in school and are more likely to be viewing television, are equally, if not more, critical than the established family viewing time. We find, through comprehensive monitoring, and appallingly high level of violence.

Indeed, the so-called children's programs of cartoons contain an unconscionably high degree of violent activity, presented in a manner that would lead young children to believe that such actions result in no lasting harm. For instance, characters falling from great heights and being merely stunned; characters beating one another over the head with stones, hammers, et cetera, with no effect; characters being run over by heavy steam rollers and getting up just a little flattened, et cetera.

And what about the hours following family viewing time? The Nielsen survey show that over 10 million young teenagers, 12 to 17, are still watching television as late as 10 p.m., even on weeknights. These are terribly impressionable years, and the arsenal of crime and violence presented so blatantly on TV after 9 p.m. is irresponsible.

These are the reasons that PTA seeks a substantial reduction in the amount of violence shown on television programs, on both network and local stations, with particular attention to the hours of 2 to 10 p.m.

weekdays, and daytime hours on weekends, when impressionable children and young people are most likely to be watching.

We firmly believe that television has demonstrated its potential for great good; that it can teach children values and behavior that are beneficial to themselves and to society. It can teach them to share, understand, respect, and appreciate differences and similarities between peoples, to deal with problems by reason and discussion; to understand and practice the simple virtue of kindness.

Television can do this and still be commercially profitable and even deal with mature subject matter, if programs are produced with care, talent, and commitment.

The evidence is clear. A child's mind and emotions can be polluted and corrupted just as easily as his body can be poisoned by contaminants in the environment. Children are powerless to deal with the situation. This means that the responsibility for effecting change rests with the adult society. That means you and us.

We believe that since the Federal Government licenses the public airwaves on behalf of, and in the best interests of the public, then it also has a responsibility to establish criteria for license renewal that will result in the eradication of TV violence from our children's environment.

Thank you.

Mr. Van Deerlin. Thank you, Mrs. Foster.

I take it from your testimony that you don't share the difficulty that some earlier witnesses found in identifying violence on television?

Mrs. Foster. No, not really. I think it is really pretty self-evident to anybody that will sit and monitor television on a regular basis.

I think it is obviously subjective. What is violent to me may not be violent to you, or vice versa. However, if you have a number of people doing the monitoring, you will come up with a good consensus of what is violence.

Mr. Van Deerlin. The witness immediately preceding you had mentioned, as you have done, the cartoon fare.

Mrs. Foster. Yes.

Mr. Van Deerlin. I find it difficult to accept the idea that cartoon characters bashing one another is quite as offensive as real people doing it.

Mrs. Foster. No, it depends on the age group that you are talking about. Real people have more effect on the older child. The younger child is really affected by TV cartoons, and that most abominable of all series that runs and reruns interminably on daytime television, "The Three Stooges." If you could do nothing else, just take that off the air.

Mr. Waxman. How about two out of the three?

Mrs. Foster. No, all of them.

We were monitoring last week, and one of them had his head in a press, and it was being ground down by the other to flatten his head, and these things seem to have no effect. Of course, the explicit, gratuitous violence that takes place in the evening among real people is very harmful to young people.

Mr. Van Deerlin. "The Three Stooges" would be almost like a cartoon.

Mrs. Foster. Yes, that is a cartoon. That is for the younger child, really.

Judge Giannini believes that the increasing rate of juvenile offenders can be related to this generation of children having been raised on television, and I think that that is something that we ought to stop and think about and realize we have a responsibility for it.

Mr. **Van Deerlin**. Has the PTA out here had much contact with broadcast licensees on this subject on an individual basis?

Mrs. **Foster**. As much as we could, through our reviewing stand committees. It does little or no good. The national TV is embarking on this program where they hope to raise a couple of hundred thousand dollars. That is the one that Mayor Daley contributed $60,000 to, because our national headquarters are in Chicago; $60,000 to that effort. That will be a national effort to do something about violence in television, and we hope that you will do something about it, too.

Mr. **Van Deerlin**. Mr. Waxman.

Mr. **Waxman**. I agree with you on "The Three Stooges." I just hate that show. I just find it quite repulsive, and I also agree with you about the cartoons. I have a son 2½ years old, and we don't permit him to watch cartoons of violence on television.

But, on the other hand, I choose not to watch a lot of shows that I don't find in good taste, but I wouldn't want to take it off the air for those who might wish to see those shows.

Mrs. **Foster**. I understand the difficulty. Believe me.

Mr. **Waxman**. I agreed with what you had to say, except when you got to the end, and then you said that we ought to set up a criteria for license renewal to eradicate violence.

Mr.s **Foster**. To move it toward, yes.

Mr. **Waxman**. We have the first amendment to the Constitution that says that government should not infringe speech.

Mrs. **Foster**. Abridge freedom, right. But we do believe that you can, within that framework, establish criteria that will work regarding excessive violence during specific hours. And you must admit that if you sit and monitor television and you watch the local stations or the network stations, you will see an unconscionably high degree of violence.

It isn't that the 7 to 9 P.M. viewing hours haven't reduced the amount of violence, but the intensity has increased.

We have today on television explicit violence; that is, far more bloody and brutal than anything that was on a few years ago at the time of the Surgeon General's report.

Mr. **Waxman**. We have, evidently, a difference of opinion right here at this table between Mr. Van Deerlin and myself. He thinks that cartoons may not be harmful. I have no firm opinion on it. I don't know whether they are or not. I just prefer not to have my child watch it, just in case they are harmful.

But I respect potential differences of opinion. Now, that is on that kind of show. Now, let's talk about other kinds of shows.

What I might consider just good adventure or action story, you might consider violence. Now, there are those very difficult lines to draw, and the real question gets to be, do you want anybody in government, a censor in effect, to draw those lines, realizing that he may accept your position, or he may accept someone else's position, and if he goes too far in censoring programs, he is going to eliminate the possibility for some people to see what they want; to remove from them a choice.

Now, we have a whole history in Western civilization of the attempted censor. We can go through books, from "Tom Sawyer" on, that people thought were unfit for children to be exposed to. Tastes change.

Mr. **Foster**. Absolutely; and I agree with you, that that is a tremendous difficulty, and that the Government, the Federal Government, has a very difficult task to try to establish some reasonable criteria that would be constitutional. We don't dispute the difficulty, but we think it ought to be attempted, certainly.

For instance, as Mrs. Roberts mentioned, the pornographic newspapers. Now, we were very invloved with the Los Angeles City Attorney and the Los Angeles City Council in the battle of pornographic newspapers. Our only concern there was to have some adult control the sales. We did not feel that one could safely say that the newspapers may not be sold, or may not be printed, or whatever, without seriously abridging the first amendment.

We really felt that our only concern was to deny access to minors, to young children, and that the sales should be under the control of an adult; sell them in adult bookstores, or wherever. And that is the way we feel here.

We are talking about accessibility. We are talking about the fact that the airwaves are public airwaves. We are not as concerned about video discs simply because that is something that adults are going to have to have some—they have their own right and control over what they buy and what they see, the same as they do about what movie they attend.

But when you are talking about hours where youngsters are in jeopardy by watching this continued brutalization of people by others, then the Government has a responsibility. You have a responsibility to really investigate the statistics and the studies made by the juvenile authorities and the probation authorities and their feeling about this rising juvenile crime and rising juvenile offenders.

Mr. **Waxman**. What about the responsibility of the family? What about the responsibility of the church?

Mrs. **Foster**. We could not agree with you more about the responsibility of the family. We can safely say, as an organization, we are doing everything within our power.

There will be a parenting conference, in fact, in southern California that the national PTA is involved in, with the March of Dimes, and we are sending people to it, and it is instruction for parents of teenagers, for parents who have teenagers who may very well be parents soon themselves. We do everything we can, in terms of parent education.

Our television program on channel 58 this fall is an attempt this way; an attempt to show families how to use television constructively. That even if something untoward or unpleasant has appeared on the screen, that parents can take the edge off that and use that in discussion with their children by saying, "How did you feel about that? What did that make you feel? What do you think should happen as a result of that," et cetera.

We are making this effort in every way we can. We don't deny the responsibility of the parent. We stress the responsibility of the parent, but Government has responsibility here to the public. It is a public airwave.

Mr. WAXMAN. OK; we appreciate your views.

Mr. VAN DEERLIN. Thank you, Mrs. Foster.

Our next witness will be Mr. Frank Orme, for the National Association for Better Broadcasting.

We are glad to have you with us, Mr. Orme.

STATEMENT OF FRANK ORME, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION FOR BETTER BROADCASTING

Mr. ORME. Thank you. Do you know what is happening while we are sitting here? We are missing the St. Valentines Day Massacre on channel 7, ABC. Yesterday, they ran "Dillinger."

Mr. VAN DEERLIN. Oh; I thought you were referring to the program from Kansas City.

Mr. ORME. That is just a coincidence.

We thank you very much, Mr. Waxman and Mr. Van Deerlin, for the opportunity of testifying.

My testimony is condensed, so if you will please allow for the fact that we do have explanations and supporting materials for some of the things that I will say in this shortened version.

In the first point, we would emphasize that Congress need not concern itself with the question of whether or not television's obsession with violence is harmful to society. The great majority of the public believes that TV violence is inflicting damage on children and youth, and the higher you go into the fields requiring professional training and experience, the greater the revulsion you find against brutality and sadism.

And now, as you know, just this past month, the American Medical Association has undertaken a campaign of vigorous opposition to violence in televised entertainment. They have branded violence as, "An environmental hazard that threatens the mental and physical welfare of children."

NABB believes that, as Congressmen, you should respond to the overwhelming professional consensus opposed to television violence.

To our mind, one of the first necessities is that you do something to halt the Federal Communication Commission's systematic efforts to eliminate Congress and the public from the processes of broadcast regulation.

On February 24 in Washington, FCC Chairman Richard Wiley told a gathering of national religious leaders that the Government can do no more in reducing violence on television. He said that the problem must be solved by the educators, the moral and religious leaders, and the everyday citizens of our society.

He said:

> If you are concerned about television violence and its corrosive effects on your young people, say so. Say so in your own communities, say so to your congregations, say so to your fellow broadcasters, say so to the advertisers, say so to the program producers, and say so to your elected officials.

He added his own view, that it was time for significant reform in this area.

Why did Mr. Wiley, in his succession of say-so exhortations, as though he were leading an anti-violence parade, include a say-so to our elected officials? He had just said that the Government can do no more. He had just washed the collective hands of the seven Commissioners of any further responsibility related to television violence, and the water from this washing was passed along to each Member of the House and Senate, and all of their agencies, and by implication to the executive branch.

The Chairman of the FCC has the right to be wrong, but he does not have the right to pose as the spokesman of the entire United States Government.

As a spokesman, Mr. Wiley is consistently much closer to the special vested interests of commercial broadcasters than he is to broad, general needs of the public. He is the prophet for the false assumption that the first amendment precludes any governmental action that would protect children from excessively violent entertainment.

But it is simply not true that the Government of the United States can do no more than it has done about what may be the most urgent social problem of our time.

Among us all, we have to decide whether we must accept ourselves as a desensitized and partially brutalized society in which violence and sadism are socially tolerable, or whether we must strive to build a world in which compassion, understanding, good will and constituted authority are dominant factors of daily living.

These are the stakes at issue, and NABB totally rejects Chairman Wiley's thesis of governmental irresponsibility.

NABB urges you to approach the forthcoming hearings on license renewal with wisdom, courage, and caution.

We also urge you to use the means and power of Congress to induct the Commission to adopt policies which will give full and proper weight to the matter of program content in all new and renewal license procedures.

To this date, the Commission has steadfastly ignored the admonishments of Federal courts to classify the performance of incumbent licensees, according to the true value of the programming services they provide in their communities. Thus, we have, in Los Angeles, a station such as KCOP–TV, which is one of the most horror- and violence-ridden stations we have ever monitored, but which has a performance rating with the FCC equal to that of the finest Westinghouse, Post, Newsweek or network stations in the Nation.

The Commission has systematically slipped into policies that countermand the fundamental concept of the Communications Act: that the public owns the airwaves.

The FCC has abandoned the law. Rather than reverse its inadequacy, it would now alter the law to fit the FCC operating policies and practices. As long as this condition continues, there is little possibility of major reforms in the crime and violence situation.

Obviously, the incumbent broadcasters who have created and perpetuated the present condition are not about to make changes, as long as they proceed almost totally without regulation. While these broadcasters have a champion in the person of an FCC Chairman who proclaims that, and I quote this: "Congress should abolish the process by which a station's license may be taken away and given to somebody else," then no reform is likely.

You should be aware that the current production of network cops and robbers programing is not the center of the television violence issue. The eye of the hurricane is located in the huge backlog of terror, murder, and sadism available to fill the afternoon, early evening, and weekend hours when the Nation's 30 million children are a prime object of broadcaster and advertiser attention. The supply is inexhaustible, even if additional violent programs were never made.

If excessively violent programs were H-bombs, we would have an overkill capacity to put distrust and fear of living into every youngster born from now until well into the 21st century.

In a preliminary survey we made just last week, we discovered that the volume of violent programs broadcast by the seven VHF Los Angeles stations is 10 percent higher than it was when we made a complete survey in the summer of 1968. The seven stations here are airing more than 200 hours of violent programs between 7 a.m. and midnight each week.

The most significant aspect of the current trend is the overwhelming dependence on violence and brutality demonstrated by three of the four independent stations in the Los Angeles market.

The ratio of violence for the independents, particularly channels 5, 9, and 13, is about 4 to 1 over the three network owned and operated stations. These three independent stations aired a total of 25 hours of violence during the family hour period, between 7 and 9.

Three-fourths of the violence problem is centered in the unguarded daytime and early evening hours, when such shows as "The Saint," "Wild, Wild West," and the "FBI" are stripped in five times per week. Seldom during these hours are parents there to watch, or even know what their children are watching. This parental absence doubles the impact of the violent action.

In closing, I would like to reaffirm that NABB does not hold a position of blanket opposition to violence in television programing. There are violent programs that are first-rate, creative entertainment, and we would welcome some of these, even during the early evening family viewing time periods.

Our objections are centered in the violence-for-kicks shows that are produced to thrill or frighten viewers with graphic crime, brutality, and horror. We would not, under any circumstance, seek or recommend governmental precensorship of programing.

The key to the television violence problem is in the door used by broadcasters to gain access to the channels they use to transmit their programs. The Communications Act makes it clear that the incumbent broadcaster must not use this door as a barrier to exclude the public from the ultimate control of its own property.

We urge you to recognize the matter of television violence as a major menace to our society and to approach it as you would any other social disease.

That completes my statement.

[Testimony resumes on p. 348.]

[Mr. Orme's prepared statement follows:]

STATEMENT OF FRAMK ORME, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION FOR BETTER BROADCASTING

Mr. Chairman, my name is Frank Orme, I am the executive vice president of the National Association for Better Broadcasting, which we will refer to in this statement as N.A.B.B. Our board of directors deeply appreciates this opportunity to testify before you on the subject of Congressional involvement in television violence.

NABB was established in 1949. Thus it is the oldest national organization concerned exclusively with consumer interests in broadcasting services. The menace of excessive violence in programing accessible to children has been a primary motivation for our activities throughout the entire twenty-eight years of our operations. Our credentials for speaking with competence in this field are based on an active and long-continuing board of directors that includes international authorities in the fields of law, psychiatry, education, religion, journalism and social welfare. We have monitored, analyzed and reported upon many thousands of hours of excessively violent programs. The composition of our board of directors and the scope of our activities are summarized in the fact sheet attached to this statement.

As far as Congressional responsibility is concerned, the question of whether or not television's obsession with violence has a devastating effect on our social structure no longer exists. It is an established fact that the overwhelming majority of the public is convinced that broadcast violence as entertainment is harmful to our country. The higher you go into fields requiring professional experience and training the greater the degree of revulsion you find against brutality and sadism in the programs watched by children and youth. In the medical field you come up to the United States Surgeon General, who four years ago said that scientific research led to the inescapable conclusion that excessive TV violence caused antisocial behavior and that the time for "remedial action" was past due.

And now, just this past month, the American Medical Association, at its convention in Dallas, declared its vigorous active opposition to violence in televised entertainment. The AMA calls television violence "an environmental hazard that threatens the mental and physical welfare of children." The truly startling thing about the resolution passed by the AMA's House fo Delegates is that it is not limited to an expression of views. It urges each of the AMA's two hundred and seventeen thousand members to actively combat violent programs and to build a public rejection of the products that are advertised on these programs.

NABB believes that as Congressmen you should respond to the overwhelming professional consensus opposed to TV violence. It is obviously your first responsibility to represent the will of the people, even though that will is not yet organized into a massive voting power that will demand Congressional protection against excessive violence accessible to child audiences.

As we understand it, the function of this Subcommittee is primarily to determine whether or not the problem of television violence requires new legislation and/or some other form of governmental action . . . and then, if Congressional involvement is necessary, to implement and recommend whatever course this action will take.

To our mind, one of the first necessities is that you do something to halt the Federal Communication Commission's systematic efforts to eliminate Congress and the public from the processes of broadcast regulation.

On February 24 in Washington, FCC Chairman Richard Wiley told a gathering of national religious leaders that "the Government can do no more" in reducing violence on television. He said that the problem must be solved by the educators, the moral and religious leaders, and the everyday citizens of our society. Quoting from the Associated Press report of Mr. Wiley's speech, he said: "If you are concerned about television violence and its corrosive effects on your young people, say so—say so in your own communities, say so to your congregations, say so to your fellow broadcasters, say so to the advertisers, say so to the program producers, and say so to your elected officials." He added his own view that "it is time for significant reform in this area".

Why did Mr. Wiley, in his succession of "say so" exhortations as though he were leading an anti-violence parade, include a "say so" to our elected officials? He had just said that "the Government can do no more." He had just washed the collective hands of the seven commissioners of any further responsibility related to television violence—and the water from this washing was passed along to each member of the House and Senate, and all of their agencies—and by implication to the Executive Branch.

The Chairman of the FCC has the right to be wrong, but he does not have the right to pose as the spokesman of the entire United States Government. As a spokesman Mr. Wiley is consistently much closer to the special vested interests of commercial broadcasters than he is to broad general needs and interests of the public. He is the prophet for the false assumption that the First Amendment precludes any governmental action that would protect children from excessively violent entertainment.

If you were to accept Mr. Wiley's statement that the Government can do no more, you could not justify the holding of these hearings nor any other hearings, nor discussions related to television violence. Certainly it is no service to the public to be subjected to further delusions that Congress is helping us while, according to Mr. Wiley's version of the truth, Congress and all its agencies stand helpless before restrictions imposed by the First Amendment.

But it is simply not true—and it cannot possibly be true—that the government of the United States can do no more about what may be the most urgent social problem of our time. Among us all we have to decide whether we must accept ourselves as a desensitized and partially brutalized society in which violence and sadism are socially tolerable, or whether we must strive to build a world in which compassion, understanding, goodwill, constituted authority and peace are dominant factors of daily living. These are the stakes at issue, and NABB totally rejects Chairman Wiley's thesis of governmental irresponsibility.

We submit to you as irrefutable the conclusion that the Commission does nothing about television violence nor about any other part of the quality and nature of programs children actually see. The perpetuation of the myth that the public can expect relief from the FCC is a cruel hoax. The Commission tells us that any action it might take to reduce the adverse effects of television violence would be censorship. But the Supreme Court tells us that it is the responsibility of Congress, through its FCC regulatory agency, to evaluate licensee performance and to make certain that the public interest, convenience, and necessity are served by the most qualified available broadcast licensees. It is not censorship to protect children from air pollution, whether that pollution originates from the exhausts of automobiles or the transmitters of broadcasters.

Mr. Wiley himself proclaimed that significant reform regarding television violence is long past due. Then he says the FCC can do nothing to achieve the needed reform. But he is still willing to involve the Commission in such delusionary adventures as the Family Hour and the promulgation of the Federal Communications Commission's policy statement for children's programing. The FCC is downplaying its role in the Family Hour fiasco. The guide for children's programing does not deal at all with programing most watched by children, and gives no guidance whatever except for a few points on commercialism. But it does say to the public, directly or through implication, "Here is your protector busy at the job of regulating broadcasters so that their programs cannot harm your children."

The bottom line comes to this: There *are* programs on the air that harm children; and the present members of the FCC intend to do nothing whatever about these programs, either collectively or individually. The Commission scores of times has recognized the failure of broadcaster self-regulation, but it refuses to regulate. It praises the Television Code and the Family Hour, yet it says it is in no way in the business of enforcing either.

This is most important: The Commission is right in its decision not to enforce the code or the family hour. Both the code and the purity hour are instruments of censorship accepted by broadcasters and forced upon the public by the National Association of Broadcasters which is a trade association, and which has no right to control the content of broadcast programing or the practices of broadcasters. However, it is the common practice of many broadcasters at license renewal application time to make a sworn statement to the FCC that they adhere to the program standards, particularly to those standards applicable to programs for children, as they are published in the television code. When this happens, *the code provisions become a part of the licensee's performance promises, and the FCC is required by law to consider the promise in relationship to the fulfillment.*

Yet the Commission, in a ruling as recent as June 23, refused even to consider a long series of alleged violations by KCOP of its proclaimed adherence to the children's programing provision of the code. The allegations were contained in NABB's 1974 Petition to Deny KCOP's license renewal application. They were dismissed without any consideration of the allegations because, the FCC said, it does not enforce the NAB Code. What a wonderful thing for the broadcaster! He can use the Code to define his standard of performance and then violate it to his heart's content because the FCC will never even look, much less interfere. The above instance is just a typical illustration of FCC abrogation of its statutory responsibilities.

NABB is in total agreement with positions and conclusions stated by Everett Parker, director of the Office of Communications of the United Church of Christ, in his testimony before the Senate Subcommittee on Communications last November. He said that advances that citizen groups have achieved in making broadcasting more responsive to the public interest have had to be bitterly fought for. Even so, he said, the Commission has reversed the progress by placing the public on the defensive in almost every aspect of broadcast regulation. Dr. Parker said that there is now an observable determination on the part of the Commission to wipe out the advances that have been made in broadcast regulation since Chief Justice Burger ruled in the WLBT case that the public is entitled to participate in the regulatory process.

NABB urges that you approach the forthcoming hearings on license renewal with wisdom, courage and caution.

We also urge you to use the means that are within your power to induce the Federal Communications Commission to adopt policies and guidelines which give full and proper weight to the matter to program content in all new and renewal license applications. These policies and procedures should apply particularly in comparative hearings wherein there are challenges to incumbent licensees and in situations where petitions have been filed to deny the renewal applications of incumbent licensees.

The direct effects of such action would be two fold: (1) it would provide the citizens of any community with an effective and relatively simple means of rejecting broadcasters who continually overload their channels with excessively violent programing, and (2) it would provide access into the television industry for potential broadcasters who are willing to provide higher standards of program service.

The indirect effect will be to alert broadcasters that they will be held accountable for questionable program services to their communities.

The policies and procedures that we have suggested are completely in accord with the mandates to the Commission from the United States Supreme Court and from other federal courts. The Communications Act provides all necessary authority. Such policies and procedures involve no infringements of the First Amendment. We do not believe that further legislation is necessary.

There is no valid reason why the Commission cannot include in its license application form a question concerning the broadcaster's policy toward the portrayal of violence. Nor is there any valid reason why the Commission cannot inform the license applicant that excessive violence, particularly in programs most accessible to children, may be regarded as a "serious deficiency" in the station's past performance. There is no valid reason why the Commission cannot add these factors to its considerations of the qualifications of license applicants. On the other hand, there are compelling reasons why the Commission must be induced to take action such as we suggest. Today, with the unchallengeable evidence of harm to the mental and physical health of millions of children, the Commission must act—on its own volition or on Congressional order—to protect the wellbeing of our society from television's onslaught of gratuitous crime, sadism and brutality.

It is obvious that a return to moderation in television violence cannot be directly controlled through legislation or regulation. Policies and procedures such as we suggest, however, can establish conditions which foster creativity and responsibility in the production and airing of TV programing.

Current production of network cops and robbers programing is not the center of the television violence issue, even though the networks will again use violence as the primary lure of their programing in the approaching season. The eye of the hurricane is located in the huge backlog of terror, murder and sadism available to independent and network-affiliated broadcasters to fill in their afternoon, early evening, and weekend hours when the nation's thirty million children are a prime object of broadcaster and advertiser attention.

There is an inexhaustible supply of crime, horror and brutality that can perpetuate itself even if additional violent programs were never made. If excessively violent programs were H-bombs, and our targets were the children of the world, we would have an over-kill capacity to put distrust and fear of living into every youngster born from now until well into the twenty-first century.

Television program distributors have a billion-dollar backlog of excessively violent movies and off-network crime series that will last as long as indiscriminate broadcasters can make a profit by airing these programs. There are several hundred outright horror movies currently in circulation among television stations in the United States. Many of these are degenerate almost beyond belief. There are many more thousands of movies that are saturated with overt violence and terror. Beyond that there is the prolific fountainhead of violent entertainment comprised of a vast number of episodes of crime series that have worn out their usefulness on the ABC, CBS and NBC networks.

There is not time here for a detailed presentation of violence statistics related to current TV programing. At any rate, such an exercise would be equivalent to reporting how much more we have after we have already reached an intolerable saturation. But we can give a rough summation of television violence as it was aired by the seven Los Angeles VHF stations during the week beginning August 7th.

According to our tabulation, the seven major Los Angeles stations during the week, between eight a.m. and midnight, inundated the viewers of this community with two hundred and eight hours of excessively violent programs that depended on crime or violence for their basic appeal to viewers. This figure indicates an increase of approximately ten percent over the violent programing broadcast by these same seven Los Angeles stations in the summer months of 1968.

The most significant aspect of the current trend, however, is the overwhelming dependence on violence and brutality demonstrated by three of the four so-called independent stations in the Los Angeles market. During the week the independent stations together racked up approximately one hundred and sixty hours of excessively violent programing, as compared with forty-eight hours for the combined total of the three network owned-and-operated stations. In other words, in random dialing, you would be several times as apt to tune in to gratuitous violence or contrived horror on a typical independent station as you would on the network channels. RKO-General's Channel 9, for example, broadcasts nine times more excessively violent programing than CBS's Channel 2.

It is interesting to note that three independent stations, Channels 5, 9 and 13, aired a total of twenty-five hours of violence during the family hour period between seven and nine.

You can see the pattern. Only one fourth of the crime programs are aired after the close of the Family Hour at nine p.m., and not more than twenty percent of the deluge of crime and violence originates from current network production.

You can know for certain that at least three fourths of the TV violence problem, as far as children and youth are concerned, is centered in the unguarded weekday and weekend daytime and early evening hours. These are the hours in which such shows as *The Saint*, *Wild Wild West* or *The F.B.I.* are scheduled to attract the footloose youngsters who are the prime prospects for TV violence addiction. Seldom, during these hours, are parents there to watch or even know what their children are viewing. This lack of parental presence doubles the adverse impact of the violent action.

In closing, we would like to reaffirm that NABB does not hold a position of blanket opposition to violence in television programing. There are violent rograms that are first-rate creative entertainment, and we would welcome some of these, even during the early evening family viewing time periods. Our objections are centered in the violence-for-kicks shows that are produced to thrill or frighten viewers with unending sequences of graphic crime, brutality and horror. We would not, under any circumstance, seek or recommend governmental pre-censorship of programing.

The key to the television violence problem is in the door used by broadcasters to gain access to the channels they use to transmit their programs. The Communications Act makes it clear that the incumbent broadcaster must not use this door as a barrier to exclude the public from its own property.

We urge you to recognize the matter of television violence as a major menace to our society, and to approach it as you would any other social disease.

FACT SHEET

National Association for Better Broadcasting

- **FOUNDING DATE** – NABB was founded in January 1949. It is America's first national consumer association concerned exclusively with the public interest in broadcasting.

- **CORPORATE STATUS** – NABB is incorporated as a non-profit educational organization. The corporate number is 2517690. The Internal Revenue Service has determined that NABB is not a private foundation as defined in Section 509 (a) of the Internal Revenue Code because it is an organization described in Section 509 (a) (2). Contributions to the Association are deductible for income tax purposes.

- **OFFICERS AND DIRECTORS** – The president of NABB is James V. Bennett, former Chief of the United States Bureau of Prisons, who served in that capacity under Presidents Roosevelt, Truman, Eisenhower, Kennedy, and Johnson. The Association is governed by a 34-member Board of Directors (the number varies from year to year). Many of these directors are authorities in the fields of law, education, social science, mental hygiene, psychiatry, librarianship, special minority interests, journalism, publishing, religion, public relations, and the performing arts.

- **AIMS AND PURPOSES** – NABB's objectives are primarily educational. A major goal [illegible] the development of public awareness of the public's rights and responsibilities within the established American concept of broadcast service. The Association is strongly opposed to censorship. It supports the promulgation and enforcement of regulations which require broadcasters to fulfill the contractual obligations they assume in exchange for their licenses to use public domain channels for commercial operations.

- **ACTIVITIES** – Since its inception NABB has been a national leader in efforts to reduce violence in TV entertainment. The association publishes a quarterly newsletter which includes in its winter issue each year NABB's long-established annual evaluations of network and syndicated program series. It also produces and distributes other printed materials for use of parents, teachers, students, other organizations, and other concerned individuals. On many occasions the Association has testified in Washington, D. C., before Senate and House committees and the Federal Communications Commission. NABB also engages in periodic monitoring studies and other special projects.

- **MEMBERSHIP** – NABB membership is open to all persons who want to support actively the Association's aims and activities. Everyone is warmly welcome. Membership dues are $10 per year for individuals; $20 per year for organizations.

- **RECOGNITION** – From its first days in 1949, the Association has attracted attention in the national, regional, and local press. There have been hundreds of articles, columns, and editorial comments ranging from the largest general and specialized magazines to PTA and church bulletins.

- **FINANCIAL SUPPORT** – The annual cash revenue of not much more than $5,000 for the past several years gives a grossly understated impression of the actual scope and significance of NABB activities and achievements. The Association typically utilizes the dollar equivalent of more than $30,000 per year in donated legal and other professional services, salary waived by the executive director, hundreds of hours of program monitoring and evaluating done on a volunteer basis, written contributions to the NABB quarterly and other printed items, services on committees and the editorial board of the Association's Educational Services Division, and miscellaneous expenses paid directly by members and directors. The income has come from membership dues, subscriptions to the quarterly, and donations in relatively small amounts from members, directors, subscribers, and a few other sources. The need for additional cash income is obvious. NABB is undertaking an organized effort to obtain the necessary funds for established operations and special projects. As noted in the paragraph on Corporate Status, all donations made to the National Association for Better Broadcasting are deductible for tax purposes.

ADDRESS: P. O. BOX 43640, LOS ANGELES, CALIF. 90043

Please see reverse side for names of NABB directors.

NATIONAL ASSOCIATION FOR BETTER BROADCASTING

OFFICERS AND EXECUTIVE COMMITTEE – 1975 - 1976

President
James V. Bennett

Executive Vice President
Frank Orme

Second Vice President
Dr. Harry J. Skornia

Recording Secretary
Gertrude Blackstock

Treasurer
Jack Heeger

Corresponding Secretary
Elizabeth Longstreet

Other Executive Committee Members:

Peter Christiansen, John Dalessio, Arnold Johnson, Jerome Weinstein, George Wilson, Dr. Isidore Ziferstein

BOARD OF DIRECTORS

Andrew Aguilar – Field representative for community relations, Children's Television Workshop – New York, N.Y.

James V. Bennett – Retired Chief, U. S. Bureau of Prisons; president, National Council for Responsible Firearms Policy – Washington, D. C.

Gertrude Blackstock – Psychiatric social worker, California State Dept. of Mental Hygiene – La Mirada, Calif.

Toni Carabillo – Vice President, National Organization for Women (NOW) – Los Angeles, Calif.

Syd Cassyd – Founder and Past President, Academy of Television Arts and Scientists – Los Angeles, Calif.

Peter Christiansen – Minister, First Unitarian Church, Los Angeles, Calif.

Dr. Richard Clendenen – Professor of Law, University of Minnesota; former head of Department of Child Welfare, State of Kentucky – St. Paul, Minn.

Dr. Edgar Dale – Author, Educator. International leader in Audiovisual Education (Ohio State University) – Columbus, Ohio.

John G.. Dalessio – Attorney, former executive director, Greater Los Angeles Urban Coalition – Pacific Palisades, Calif.

Morton Edwards – Publisher and Editor, *Today's Child*, Roosevelt, N.J.

Dr. Bertram R. Forer – President-elect, Los Angeles County Psychological Association – Los Angeles, Cal.

Charles Macdonald Grace – Trustee and/or Director in more than twenty charitable and educational institutions; investment business executive; security analyist – Santa Monica, Cal.

Jack Heeger – Public Relations Executive – Los Angeles, Calif.

Steve Franklin Jackson – Director of the Center for the Study of Communications and Religion – Claremont, Ca.

Sally E. James – U. S. Commission on Civil Rights – Los Angeles, Calif.

Arnold M. Johnson – Attorney, former directing attorney for the Legal Aid Foundation – Los Angeles, Calif.

Robert Thayer Jordan – Council on Library Resources – Washington, D. C.

Norton Kiritz – President, Grantsmanship Center – Los Angeles, Calif.

Ella Lane – Marketing executive; media consultant – Los Angeles, Calif.

Elizabeth Livingston – Advocate of consumer interests for past 20 years Fort Myers, Fla.

Elizabeth Longstreet – Chairman of NABB evaluations committee; chairman for mass media, Tenth District PTA – Los Angeles, Calif.

Morris Marmon – President, Culver City Calif. Board of Education.

Dr. Tomas M. Martinez – Sociologist; former director of Mexican-American seminars, Stanford University – Moss Beach, Calif.

Frank Orme – Writer; editor, critic, NABB executive director since 1964 – Los Angeles, Calif.

Dr. Paul Popenoe – Syndicated columnist; head of Institute of Family Relations – Pasadena, Calif.

Dr. Taher Razik – Head, School of Communications, University of Buffalo – Buffalo, N. Y.

Rev. Simon Scanlon, O.F.M. – Journalist and producer, Catholic Broadcasters Assn. – San Francisco, Calif.

Dr. John Schwarzwalder – Executive vice president and general manager, KTCA-TV and KTCI-TV, St. Paul, Minn. (Was nation's first manager of an ETV station in Houston.)

Robert Lewis Shayon – Critic; writer-producer-director. Professor of Communications, Annenberg School, University of Pennsylvania – Philadelphia, Penn.

Dr. Harry J. Skornia – Educator; author; critic; broadcaster. Professor at University of Illinois; former president of National Association of Educational Broadcasters – Chicago, Ill.

Clayton Stouffer – Founder and first president of Viewer Sponsored Television Foundation, licensee of KVST-TV, Los Angeles – Palo Alto, Calif.

Louis C. Sudler – Business executive; civic leader; president of Chicago Symphony Orchestra – Chicago, Ill.

Jerome Weinstein – Attorney; civic leader – Beverly Hills, Calif.

Rev. George Wilson – Minister, First Presbyterian Church – Pomona, Calif.

Dr. Isidore Ziferstein – Research psychiatrist; faculty of Southern California Psychoanalytical Institute; author of numerous contributions to medical literature – Los Angeles, Cal.

Internationally noted former directors of NABB include: Lee de Forest, Everett C. Parker, Al Capp, Frederick Wertham, Newton N. Minow, and Garry Cleveland Myers. The association was founded by Clara S. Logan, who remained as president until her retirement in 1965.

Mr. VAN DEERLIN. Thank you, Mr. Orme.

You have given quite a rundown on the situation with local broadcasters here in Los Angeles. You mentioned KCOP. That is 13, is it not?

Mr. ORME. That is right.

Mr. VAN DEERLIN. What has been their contribution here to the violence?

Mr. ORME. Well, it has been many contributions, and it continues over a period of years. Shows like "Speed Racer." They are running more violent cartoons now than all of the other stations, all the other VHF stations combined, in Los Angeles.

They ran a horror picture series, the name has slipped my mind, twice a day; 6 o'clock at night and 6:30, for almost a year, and on Saturday, they run some of the most brutal and degenerate and sadistic horror pictures that have ever been made. They make "Psycho" look like an afternoon plaything. They do that Saturday and Sunday afternoon at 3 o'clock. You were just asking on the violence record?

Mr. VAN DEERLIN. Of course, channel 9's license renewal problem here was one of the classics of all time.

Mr. ORME. As you well know.

Mr. VAN DEERLIN. They were zapped by the PTA, and I guess by your organization, and everybody else.

Mr. ORME. And by you personally too, as I know.

Mr. VAN DEERLIN. Well, they weren't too alarmed about that, but as I recall, the hearing officer for the Commission found them utterly without any basis for——

Mr. ORME. Without any blemish.

Mr. VAN DEERLIN. No, no, no. The hearing officer recommended their license be denied.

Mr. ORME. Oh, yes, he did.

Mr. VAN DEERLIN. And then it went on. I think they were 11 years without having the matter resolved, and it may still be under appeal.

Mr. ORME. I believe it is finished. I believe the Supreme Court made a final ruling on it.

Mr. VAN DEERLIN. So they have been sanctified at last.

Mr. ORME. Yes.

Mr. VAN DEERLIN. I think this was the station that showed "Jack the Ripper" 25 times on Saturday morning.

Mr. ORME. They showed it every day for a week for five consecutive nights at 7:30, and then on Saturday afternoon twice, and Sunday twice, during the daytime hours. And "House of Wax."

Mr. VAN DEERLIN. Thus is the world's greatest cultural medium utilized.

Mr. ORME. They are still doing things like that, but channel 13 has sort of taken over the top honors.

Mr. VAN DEERLIN. These are the independents that the cable wants to carry to the four corners of the world.

Mr. WAXMAN. Just to San Diego.

Mr. VAN DEERLIN. I said the four corners of the world.

What is your organization's activity nationally?

Mr. ORME. We have been engaged in communication with advertisers during the past—since the first of June; national advertisers. We have monitored the programs on these horror pictures on channel 13, and then we make synopses of the content, and then we made lists of the advertisers, and we sent these synopses and a letter explaining what they were doing to them, and to our great delight, within the first 3 or 4 days, 5 national advertisers withdrew their advertising from those shows, and I think right now, 14 different advertisers have withdrawn from them, and the president of Gillette and the top executives in J. C. Penney and Procter and Gamble, and people who represent Kinney Shoes and Woolworth-Woolco telephoned me personally, several of them, thanking us for what we were doing and expressing their complete accord with what we are doing.

But now, they have these contracts, open contracts, for spot announcements with various advertisers, as they had with Cal Worthington, and they can put these spots in indiscriminately. The station can put them in, so they filled up their advertising again, and we have written seven or eight of them, and most of them are dropping off.

Cal Worthington berated the Government and the FCC for allowing such garbage on the air. "Garbage" is the word he used.

Mr. VAN DEERLIN. Who is Cal Worthington? Sorry.

Mr. ORME. He is the world's largest Ford dealer, I believe. You haven't been watching Los Angeles television.

Mr. VAN DEERLIN. Well, I am almost sorry I asked.

Mr. Waxman.

Mr. WAXMAN. Mr. Orme, we sometimes find that yesterday's reforms are today's problems, in our field of business. We found ourselves fighting against the seniority system in Congress, because we saw it was holding back any kind of progress, but there is some irony, because the seniority system was a reform against the system in Congress where the Speaker had all the power and abused it during Speaker Cannon's days at the turn of the century.

As I understand in television broadcasting area, at one time the advertiser used to buy the program, and therefore could have a lot of say over the content of the program itself, and one of the reforms against that kind of thing was to have the networks take over the responsibility for the program content, and have advertisers buy the message to be beamed out to a given population of *x* amount, but no say over content.

Now, in effect, are you suggesting that we ought to go back to the idea of pressuring the advertiser, so the advertisers can pressure with regard to the program content?

Mr. ORME. No, I don't think that you should try to pressure the advertisers. I think that is up to the public itself.

Mr. WAXMAN. No, no, I meant the public; not the Members of Congress, but those of us who are concerned about a particular type of programing.

Mr. ORME. We have just asked them to use their own judgment, whether they wanted to stay on or whether they didn't. We didn't threaten any boycott, or anything else. We were very sincere in that, too.

Mr. WAXMAN. Would you go so far if there were a show that really offended your sensibilities, to suggest to the advertiser that you might do that?

Mr. ORME. Our board of directors would have to be polled on that and consider it. I couldn't answer the question.

Mr. WAXMAN. I appreciate your testimony. Thank you.

Mr. VAN DEERLIN. Yes. We are very grateful to you for being with us and having sat patiently for as long as you have.

Mr. ORME. It has been a pleasure. Thank you.

Mr. VAN DEERLIN. Our next scheduled witness is Mr. Rosel Hyde, a former Chairman of the Federal Communications Commission, who for many years before he was Chairman, was a key staff member of the FCC. He is here today representing a Mormon organization, the Bonneville International Corp.

Needless to say, Mr. Hyde, you are one person who will always be extremely welcome before this subcommittee.

STATEMENT OF ROSEL H. HYDE, ON BEHALF OF BONNEVILLE INTERNATIONAL CORP.

Mr. HYDE. Thank you, Mr. Chairman. I appreciate that gracious introduction. It will relieve me of the necessity of identifying myself.

Mr. VAN DEERLIN. I am willing to stipulate to all this.

Mr. HYDE. Thank you very, very much.

Bonneville Broadcasting Co., being concerned not only with the high incidence of violence and other matters which have troubled observers of our society as being inimical to the moral values associated with homes, and even more concerned about what appears to them to be a trend toward further abuse of the airways, strongly supports the family viewing concept. That is why I am here.

Mr. Kjar, the executive vice president, was here for a time, to indicate their interest in this matter, but it was necessary for him to leave; Joseph Kjar.

In an effort to provide a perspective, which I hope will be helpful to the inquiry and study which the committee is undertaking, I review certain basic principles which have emerged in the development of law and policy in relation to broadcasting.

There was a period immediately prior to the enactment of the Radio Act of 1927 when the governmental department having jurisdiction found itself powerless to limit the number of operators who had the right to go on the air upon submission of appropriate applications, which the Department was obliged to grant.

It was soon demonstrated that if everyone who wished to operate a station could go on the air, no one would be able to enjoy or even to receive broadcast services without interference. Public clamor stimulated congressional action, to establish a licensing authority with power to provide order and discipline in the use of frequencies. The licensing scheme, which was established by Congress in 1927, and as you have mentioned earlier was brought forward in the Communications Act of 1934, provided for the licensing of only the relatively few who could be accommodated without causing undue interference, but upon condition that those who did receive licenses would serve the public interest.

Let us consider how the public interest would be served by private licensees, under the scheme developed by Congress. I know this is sort of elementary, Mr. Chairman, but I do draw a corollary here, and I think it may be helpful. There would, of course, be a number of alternative approaches available to Congress. In some foreign countries, operation of broadcast service has been considered as properly the function of government.

Another approach would be to allow licensees unlimited discretion in the use of the frequencies, subject only to such regulation as might be derived from competitive forces.

A third possibility, which did receive serious consideration, would be to impose the obligations of a common carrier upon broadcast licensees, who would then be obliged to provide transmission services upon demand, in accordance with uniform tariffs, as in the case of the telephone companies or the telegraph services. However, regardless of whatever merit other approaches might have had, Congress, in its wisdom, developed a concept under which the licensee would be charged with the responsibility of acting as a fiduciary for the benefit of the public in providing and selecting materials to be broadcast.

Certain principles are inherent in this plan:

One, the paramount interest to be served by broadcasters is that of listeners and viewers, or the public in general; not the particular interest of individuals wishing to have their views and voices heard.

The interest of the general public in having selected, planned, and organized programing is superior to the interest of individuals who might wish to be heard.

The provisions of the Communications Act, which exclude broadcasters from the obligations of carriers, protect the public against irresponsibility and chaos in programing, in much the same way that the licensing provisions of the act controlling the use of the frequencies prevent chaotic interference.

The licensees of KSL–TV and KIRO–TV feel their responsibilities as trustees for the public very keenly and undertake to exercise their responsibilities in a manner reflecting fairness, good taste, respect for the moral values of the homes where their signals may enter, and of course, respect for the intellectual and cultural interests of all potential viewers.

But the problems we are concerned with in these discussions are not susceptible of resolution at the local level, because programs which viewers wish to observe, originate from many sources throughout the country.

It is the opportunity of broadcasting to bring materials from outside the community to the community, and it is for that reason that we have to have a system that tends to protect program material at the sources.

There are still other reasons why the problem must be dealt with upon a nationwide basis. The public has become accustomed to broadcasting as a universal service, to be relied upon as fit and appropriate for the welfare and enjoyment of the public in its entirety.

In this discussion, we would not wish to become concerned with the question as to whether it is good or bad to have places where those who are interested may observe materials which offend the sensibilities of a typical home, but we do express our views that the airwaves should not be subverted to the interests of those who are not satisfied with programing appropriate for reception in the home.

It has been asserted that the family viewing concept would conduce toward bland programing. As to this, we agree with Senator Pastore that such argument makes a sad commentary on the creative genius of American television.

We do not believe that it is necessary to resort to excessive violence or to materials which offend the home, in order to create interest.

I have heard the suggestion that such materials themselves can become monotonous and dull. That process takes too long to be dependent upon, I think.

We are, of course, aware that certain interests oppose any effort that would place limitations of any kind on what may be transmitted into the American home, on the ground that such efforts must necessarily offend rights protected by the fist amendment.

As we have indicated, there is no constitutional right to activate a broadcast transmitter. Further, as we have indicated, access with certain exceptions, such as provided under section 315 of the Communications Act, is subject to the program judgment of licensees who are authorized to pass upon the appropriateness of materials offered and charged with the responsibility of excluding materials not found acceptable.

In this connection, you might note that the FCC renewal form has a little instruction in it that tells the broadcaster that he is responsible for everything that is transmitted.

Mr. VAN DEERLIN. Even though it comes down the tubes from the network?

Mr. HYDE. Right, sir.

We are also aware that allegations have been made that the family viewing concept of the industry code was government-inspired, and therefore constitutes government censorship. The issue is in litigation. For our part, we deny the allegation.

I may say, on the basis of my experience, that FCC Chairmen are credited with powers that go far beyond anything that I envisaged in my experience. If a Chairman wishes to have someone to really—in summary, he should undertake to tell people what to broadcast. That is the way to get a reaction as to what his responsibilities are.

The growing need for attention to the problem addressed by the industry code, family viewing, has been under consideration for years. It was not generated by Chairman Wiley. It was around long before Chairman Wiley.

On June 10, 1968, President Johnson issued an Executive order creating a National Commission on Causes and Prevention of Violence. He appointed 13 distinguished citizens, with Dr. Milton Eisenhower as Chairman, to serve on the Commission.

The Commission, although charged with a much larger area of responsibility than the issues of this hearing, gave substantial attention to what they termed, "Violence and the Media," and made certain recommendations, including the following:

> That members of the television industry should become more actively and seriously involved in research on the effects of violent television programs, and their future policies, standards and practices with regard to entertainment programs should be more responsive to the best evidence provided by social scientists, psychologists, and communications researchers.

As the committee is aware, there have been other congressional hearings on the subject, and the Surgeon General was requested to investigate the effect of certain kinds of programing upon children.

Broadcasters are, of course, concerned about developing trends in program production. They are also aware of the concern of viewers, expressed in complaints to stations. These concerns have been brought to the attention of the industry code authority.

We view the new code provisions, they are not quite as new as that might suggest; as responsive to industry action designed to assist broadcasters in the discharge of their responsibility as trustees for the benefit of the public.

We would add finally the view that in this sensitive area, industry concern and action is much to be preferred, as against government intervention. We hope that this committee will encourage industry efforts undertaken, to assure that programs prepared for family viewing are appropriate for that purpose.

This statement has been approved by Bonneville, but I would like to add for my own part that when industry undertakes to its organization to see that family viewing programs are appropriate for that purpose, let's encourage them, rather than to find—and if the efforts they have made so far are not up to needs, let's encourage them to further effort, rather than renounce them for their effort.

Mr. VAN DEERLIN. In your last paragraph, Mr. Hyde, you say that industry voluntary action is much to be preferred to government intervention, and yet, as a former Chairman of the Commission, I guess you don't see the first amendment freedoms of broadcasters as being commensurate with those of the print media, do you?

I am not laying a trap for you. This is pretty essential.

Mr. HYDE. No. No, I cannot answer your question in a plain yes or no form, and I know it is not intended to trap me, either. The broadcaster is in a different position than that of the newspaper. He has the privilege of a license, and it was Congress that provided that he should be a trustee for the public and select programs for them.

The policy, the act, is to prohibit him from converting this license privilege to his own personal interest. If he could, a licensee like one of the great corporations, could sell its product, advocate its philosophical viewpoints and disregard all others. A newspaper can do that. They may not find it wise to do so, they may not be able to stay in business, but legally they could print and publish whatever they choose.

A broadcaster, however, under the act, must see that his service is directed to public good, and to do that, he must avoid anything that would appropriate his platform, his frequency to private purposes.

Some of the earliest and first decisions of the Radio Commission made that distinction; that a license to operate in the public interest is not a license to sell your own personal wares and to promote your own views to the exclusion of others.

I am sorry it took me longer to answer your question.

Mr. VAN DEERLIN. No, that is fine.

To the extent possible, you would, of course, like to see news and public events broadcasting completely free, as the print media.

Mr. HYDE. I would indeed. I would indeed. As a matter of fact, I think that section 326 of the act, which prevents the Commission from adopting any rule or regulation that would constitute censorship, was a very necessary and a very wise move, but I don't think that the fact that we have that provision, and I don't think the first amendment either, should make it possible for the licensee to use the frequency as if it were a private enterprise, like a newspaper.

Mr. VAN DEERLIN. On looking back, Mr. Hyde, do you think that the Commission in the years that you have been so closely associated with it, and since, has been as concerned as it might over the influence it could have brought to bear on the industry through a more zealous use of the license renewal procedures?

Mr. HYDE. I think that what may have seemed like a lack of activity, or lack of interest, has really been Commission concern about anything that would constitute government censorship. Now, the accusation has been frequently made, and a notice to Commissioner Wiley came in for his attention today; that they duck behind the first amendment as an excuse for not maintaining an appropriate surveillance, but do you know that public interest is served by seeing to it that the expression of different viewpoints is encouraged, not restricted, and since you mentioned broadcasters as being in the business of finding and disseminating the news, let's consider the fact that it is the business of news people to examine the Government; not the Government to examine the news.

Mr. VAN DEERLIN. Yes. On the other hand, we have heard from the witness who just preceded you, somewhat egged on by the chairman of the subcommittee, granted; he touched on the case of a Los Angeles licensee who went 11 years on a temporary license in the face of a hearing officer who found the licensee utterly unfit to hold a license, and it seems to me that this was a case where your views on some of that TV violence——

Mr. HYDE. Was this a TV station? I recall an AM station.

Mr. VAN DEERLIN. Channel 9, Los Angeles.

Mr. HYDE. Oh.

Mr. VAN DEERLIN. RKO General.

Mr. HYDE. Oh, I see. Oh, yes. I think there is a competing applicant in that. Well, I am not in a position to discuss the particular case. That does seem like an overlong time, doesn't it, to make a decision.

Mr. VAN DEERLIN. Well, there were 11 years, during which the Chairman of the FCC couldn't discuss the case, because it was pending.

Mr. Waxman.

Mr. WAXMAN. Mr. Hyde, what is the Bonneville International Corp.?

Mr. HYDE. It is a holding company for licensees, which, in turn, is owned by the Church of Jesus Christ of Latter-Day Saints, or Mormon Church. Bonneville is owned at the top by the corporation of the president of the Church.

Mr. WAXMAN. Are they television, two television networks?

Mr. HYDE. There are two television stations; one in Seattle, one in Salt Lake City. There are AM stations in several cities, and an FM station here in Los Angeles.

Mr. WAXMAN. What kind of television——

Mr. HYDE. They are network stations. Both of them are affiliated with CBS, the Seattle and the Salt Lake City.

Mr. WAXMAN. So the fact that they are owned by the church makes no difference in their television shows?

Mr. HYDE. No; they are operated apart from the church by a license corporation, and they are expected to serve the interests of the public and to stay away from anything that would look like an operation for the licensee's benefit. They are business corporations.

Mr. **Waxman.** I see.

Mr. **Hyde.** They are typical network affiliates. Well, they are network affiliates; we like to think that they are a little better than the typical one might be.

Mr. **Waxman.** Do they turn down network shows that they consider to be violent?

Mr. **Hyde.** Yes, they do, but the difficulty with that, Mr. Congressman, is this. A network show, which has the benefit of creative people, here in your district and others, if it is all created and it is shown on other stations and not shown in Salt Lake City or Seattle, it can give grave concern.

What I am saying is, it is very difficult to make any changes in the content of a given program at the end of the line. The industry code is designed, and it was encouraged by the affiliates, of which KSL is one, to try and bring some discipline against abuses.

I would like to make this point. There was some impression given here that this is a scheme to censor all programs. It really is an effort to just eliminate the grossest kind of abuses.

Mr. **Waxman.** I sort of lost track of my question.

Mr. **Hyde.** Oh.

Mr. **Waxman.** You are an affiliate of CBS, the affiliate has the right to turn down a show.

Mr. **Hyde.** They do indeed. They do.

Mr. **Waxman.** Do either of these two television stations ever turn down a program?

Mr. **Hyde.** Yes; they have. I am sorry Mr. Kjar had to leave. He would give you specifics on it, but yes, they have turned them down.

Mr. **Waxman.** Do you recall any specific programs?

Mr. **Hyde.** No. No, I can't at the moment.

Mr. **Waxman.** Now, aside from the shows that they get from the networks, do they produce any of their own shows?

Mr. **Hyde.** Yes, they do, they do, and they maintain a community advisory group, and they endeavor to meet their social responsibilities to the community in every way possible. Their interest in this code is because of the help they need.

Mr. **Waxman.** Excuse me. I wanted to ask you some questions, because I wanted to get some information for myself.

What kind of shows do they produce themselves? When you say they have an advisory committee, are they local shows related to the local community in which they are located?

Mr. **Hyde.** Their largest effort is in the news department. They provide more local news than any other TV station in their community. That would be their largest local production. From time to time, there will be a special, but they do not produce anything like the week-to-week situation comedies, or things like that. That is not feasible for them.

Mr. **Waxman.** Do they provide any special programing for children?

Mr. **Hyde.** I do not have specifics on that. I understand that they did have a program which they favored, instead of "Captain Kangaroo" at one time.

Mr. **Waxman.** Instead of "Captain Kangaroo?"

Mr. **Hyde**. Well, at that hour, yes, but I really don't have that.

Mr. **Waxman**. I wonder if I might, just for the record, ask if you might supply us at a later time with that information.

Mr. **Hyde**. Yes. I will undertake to get you some information about that.

Mr. **Waxman**. I would like to know what specific shows have been turned down that were network shows, and then special programing that is provided by Bonneville International.

Mr. **Hyde**. Yes. And I presume you would be interested if they found it appropriate to change the hour of broadcasting a particular program?

Mr. **Waxman**. They have the power to do that, too?

Mr. **Hyde**. Oh, yes.

Mr. **Waxman**. That would be interesting.

Mr. **Hyde**. Well, they have the power, subject to the network not refusing to deliver it, yes.

Mr. **Waxman**. So even though it is a network that is owned by a church group, that really is sort of an aside, isn't it?

Mr. **Hyde**. They undertake to obtain managers who are specialists in broadcasting, who are professionals and can operate as professional broadcasters; not as representatives of the church. I would hope that their interest in moral and spiritual values would give some tone to their operation, but they do undertake to engage professional broadcasters, rather than people who have a religious purpose.

Mr. **Waxman**. Does the fact that it is church owned make any difference in terms of their tax status?

Mr. **Hyde**. No. No, not in this case. Not at all. These people, the last thing they would do would be to ask an exception to the rule, for fear it would imply some measure of government control, which they would not wish.

Mr. **Waxman**. When you were Chairman of the FCC, did you have meetings, private meetings, with the network executives to discuss government or broadcasting policies?

Mr. **Hyde**. I can't recall any private meetings to discuss programs with them at all. We would, in the regular course of business, see representatives of networks from time to time.

Well, in my experience, particularly during the Eisenhower administration, these had to do with television standards, color standards and such. I do not recall any meetings in which programs were on the agenda, no.

Mr. **Waxman**. Were you in any way surprised that the Chairman of the FCC would meet with network executives and talk about what might well have been involved in the content of programing, either directly or sort of indirectly?

Mr. **Hyde**. I really don't know what the arrangements for that meeting were or what precipitated it. I do know this, that during my period of responsibility, my door was open. I would see anyone that wished to come and see me. I did have visits on occasion from NAB, who were, in an instance or two, were very eager to get some indication of interest in their code, and I did find it appropriate to indicate my view that the code served a very useful purpose, and I will repeat that again here.

One of the reasons is this, that——

Mr. **Waxman**. You didn't tell them to adopt that?

Mr. Hyde. Oh, I did not tell them to adopt anything, but I did indicate that the use of a code served a very useful purpose. Let me explain two basic reasons: One, the Government, whatever the agency might be, would find it very difficult to adopt rules and regulations having to do with matters of taste or program content, in general, because of the first amendment considerations.

But assuming that you did find your way to solve the legal problem, there would still be another one, and that is that what is good taste, what is appropriate at a given time, tends to be a subjective matter, and how would any government agency, any rules, set up criteria by which you would determine what is good or bad taste?

To me, an industry code seemed about the best available approach to providing some discipline, some guard, against what I will call abuses.

Mr. Waxman. What years were you Chairman?

Mr. Hyde. I was Chairman in the early part of the Eisenhower administration, beginning in 1953 to the end of 1955, and I was called to that position again in 1966 by President Johnson, and I served from, oh, I think it was April of 1966 until the last of October of 1969 as Chairman.

Mr. Waxman. I appreciate you sharing your testimony with us.

Mr. Hyde. Well, I wish to thank you for your courtesy in hearing me today. I know that you have been pressed to accommodate the interested people who have wanted to present testimony.

Mr. Van Deerlin. May I give you one last question, with an advance caveat that you don't have to answer it if you don't wish to, because it doesn't concern immediately today's business.

Mr. Hyde. Certainly.

Mr. Van Deerlin. I may not have another chance to ask you in a formal atmosphere.

Do you think it would be a healthy thing, quite apart from the regulatory reform that is yet to come out of Congress, if the Commission were to meet in open session with the daylight, sun and fresh air, coming in upon you?

Mr. Hyde. There have been meetings in which I have participated where I thought the discussions and the contributions of Commissioners would be a very good thing for the public to know about. There are other cases where you are discussing controversial issues where the interests of various people are involved where it would be very difficult for the Commissioners sitting in judgment if these interested parties were looking over their shoulders.

I think probably there is room for a little ground between a complete open door, or a door open at all times, and a lack of discretion to hold an executive meeting because of the circumstances or the issues to be discussed. I imagine that this corresponds pretty much to your own experience.

Mr. Van Deerlin. Oh, yes. You know, the way we have it in Congress now, committee meetings are open unless by a recorded vote the majority decides to close it. Fewer and fewer meetings are closed.

Mr. Hyde. I would think the Commission would need to have discretion in that matter, I know there are occasions when you will not be able to get the kind of frankness you want from your staff, or maybe from a Commissioner, if they are going to have to talk in public, and

I do not mean to suggest that these men would want to compromise at all.

I have participated in meetings; I remember particularly with Chairman Wayne Coy, and I think you all remember him. Chairman Coy felt that it was his business to get the best out of every member of the board, and he quite frequently would act sometimes as the devil's advocate, to push a position, in order to get a reaction from other members of the board.

Well, proposals made for the purpose of generating discussion, stimulating ideas, taken out of context could give difficulties, you know, and you can't always stop after a proceeding and explain that this was a part of the business of developing an idea, not a change in position.

Mr, Van Deerlin. There is something to be said on both sides, I know.

Mr. Hyde. There is something to be said on both sides, and if you do find it appropriate to require or pass a sunshine provision, I would strongly urge that you give them some broad discretions, so that they can act appropriately in those cases where they just cannot discuss it in the open.

Mr. Van Deerlin. Thank you, Mr. Hyde.

Mr. Hyde. Thank you very much.

Mr. Van Deerlin. It was a pleasure to have you.

Pursuant to my suggestion yesterday that we would remain in session as long as necessary to hear any additional witnesses who would like to testify, I have a list which I assume may be a complete list. If it is only a partial list, I hope we will have others who will offer to come later.

The first name I find on the list is Mr. Howard Watts. Will you identify yourself, Mr. Watts?

FURTHER STATEMENT OF HOWARD WATTS, LOS ANGELES, CALIF.

Mr. Watts. My name is Howard Watts. I am a candidate for the 46th Assembly District, and I am also a constituent of my Congressman who is holding this meeting as the subchairman.

First of all, I would like to make some personal statements. The Republican Party National Convention, after listening to it for the last 2 days at this meeting, is not a violence-packed group, and I object to the chairman making those kinds of statements in a public meeting.

Second of all, I would like to make it very clear that I object very strongly to a Congressman holding a meeting near his own district where his opponent is not able to get the coverage of the news media. I think it is illegal, and I think it is the kind of activity that the incumbents are able to put pressure on a nonincumbent from getting a chance to voice his opinion the same amount of time as the incumbent.

To get into the issue, the Los Angeles Board of Education, who I monitor every Monday and Thursday, came out with their own point of view on the family television viewing hours, and pertaining mainly to channel 58, which is KLCS, an educational station that they bought with tax money, and the statement is:

> It is proposed that the Board of Education approve certain broadcast standards as set forth herein for the telecasting of programs by KLCS 58.

This was passed by the board sometime in June of this year, and the document is, "Educational Development Committee, Report Number 2, Tab 10," if you would like to know the material. You do have a copy of it. I gave your staff a copy of all this material.

One of the board members was going to come over and do this activity for the board, but for some reason or other, when he put his notice motion in, they couldn't get a full board there, and so they didn't show up, and the board didn't authorize the board members to come over to testify before this committee.

It further goes on to state that since the inception of television, various individuals and organizations have expressed concern over the effect certain types of programs might have on the behavior of children. Many studies on the subject have been made, including the latest report out of Rand Corp., which was reviewed by the Educational Development Committee of the Los Angeles Board of Education on May 24, 1976.

As a result of this report, members of the Educational Development Committee requested that the KLCS staff prepare a policy statement related to programing. This statement would serve as a guide for local production at KLCS and for procurement of outside programing.

In addition, a policy would be communicated to commercial stations, as if it is any of their darned business what commercials are doing on the air. I consider this a censorship-type of statement by the board of education and to producers of educational programs.

A policy would also be shared with parents and school staffs, along with suggestions for guiding students' television viewing.

KLCS will not include material considered to be obscene, pornographic, vulgar, or excessively violent. However, some artistic, literary, historical, medical, and documentary programs known to contain language and graphics that might be considered objectionable by a few, but acceptable to the majority of viewers in the context of their presentation, will be screened by the station staff prior to broadcast.

Work such as the plays of Shakespeare, Biblical literature, works of art, historical drama, will be broadcast without editing. Programs considered adult in nature for reasons other than those enumerated in the first paragraph of this document will be so identified visually and audibly prior to broadcast and will not be broadcast prior to 7:30 p.m.

That is their statement, plus a memo from Dr. Handler, dated March 18, 1976, to Dr. Johnston, the superintendent of schools in Los Angeles, and I won't read all of it, but it says:

"Review of the family hour programing concept is related to KLCS operating practices." The television code to which the family viewing provisions are an amendment, is a statement of the position of the National Association of Broadcasters. The public broadcasting station parallel to NAB is the National Association of Educational Broadcasters.

A statement concerning special family viewing provisions has not been adopted by NAEB.

At a recent meeting of public broadcasters, Dr. Eleanor Richardson participated in an informal conversation concerning the family viewing problem. While admitting this may not have been a representative sampling of the group, Dr. Richardson concluded that this segment of the industry is not as concerned with family viewing and its impact on programing as is the commercial segment. It is probable that this difference is due to the origin of programing used by the two different groups.

The public broadcasters use material which is generally educational in nature, while the commercial broadcasters are influenced primarily by the entertainment industry centered in Hollywood and New York and are faced with pressures to achieve a high audience rating exerted be advertising agencies.

KLCS has not taken to the board a proposed policy statement concerning family viewing because of the nature of the after-school programing shown by the station and because of the relative ease with which adoptions to an occasional questionable item can be made. Generally, all of the programing between 9 a.m. and 8 p.m. is family viewing.

The hours and types of programing shown from 3 p.m. fall into the three general groupings: From 3 to 5, staff development; from 5 to 7, a combination of children's programs, repeats and in-class programing and general interest programs are broadcast during these hours. From 7 to 9, general interest programing, excluding items specifically for children. Among these are "Adams Chronicles," student news, "Lowell Thomas," and continuing educational programing. "Masterpiece Theatre" or a similar program also is generally scheduled at this time.

When one of the latter programs contains a segment which would be questionable for young audiences, this information is generally made available to the station by public broadcasting service. The program is then previewed and a decision made to show the film, bleep out the questionable words, such as, in this instance, "d-a-m-n," or show the film after 9 p.m.

If this latter procedure is followed, an announcement of the rescheduling of the program is carried during some of the evening programing and broadcast hours are extended to provide the additional time required to show the film.

The station has received no negative comments concerning this practice. I can believe that, since the program policy has not been in operation very long.

Proposed KLCS policy statement, position paper, should the board feel such a policy is needed: KLCS will not knowingly broadcast program material considered as obscene, pornographic, vulgar, excessively violent, or in bad taste at any time of the day or night. Programs considered adult in nature will be so identified visually and audibly prior to broadcast, which is censorship, and will not be broadcast prior to 7:30 p.m.

Some artistic, literary, historical, medical, and documentary programs may contain language and graphics that might be considered objectionable by a few, and that is a continuation of what I just said in the regular board report.

They have another statement regarding the Rand Corp., and you have got a copy of it. It is titled, "Television and Human Behavior," and it goes into a large documented item.

I personally feel, what I have heard the last 2 days in this meeting, by first of all the producers, writers, and the actors themselves, or actresses, I happen to feel that they seem to think that our public air should be given to them without any kind of stopping their types of viewpoints going on the air in their programing.

I don't happen to agree with what I have heard today and yesterday by them, but I do agree that this group, the caucus, and that is producers, writers, and directors, is that it is a very good start in possibly contacting those kinds of individuals, of which many of them that spoke today and yesterday are in that group, and letting them know what we think of the violence, so-called violence, and so-called sex, sexual exploitation on television, not only between 7 and 9, but other hours, too.

I happen to feel the reason for the 7 to 9 situation was because of what we have in California, and the Congress doesn't have that, so all of their commissions would be governed by it, and that is the Ralph M. Brown Act, which would make all of their meetings open to the public; would cause executive sessions to be taken care of only when there is some very personal matter, and it would clear up a lot of the unnecessary closed meetings that the FCC holds all over the country whenever they do hold their meetings.

I also feel that Congress, from what I heard yesterday, should not revamp the 1934 act, by what the chairman said. He thought that the next Congress after January, they may decide to revamp the whole act. I don't happen to feel that that act should be revamped. I think what is needed is more local control over the licensee, over the producers of the programs, and I can tell you, I love the programs that come on, or used to come on, between 7 and 9, and I happen to feel that it is not what you look at, it is what you get out of the program when you see a violence-type program.

I don't happen to listen to the comedy programs at all. I despise them. I do watch the shows that are on channel 13, some that are on channel 9, and much of what happens on 4, 7, and 2; 2, 4, and 7.

I think the family hour pretty much is on 2, 4, and 7. I am not sure whether it is on the other stations or not, but I do say very distinctly that it is not up to Congress to censor the stations. It is up to the public to tell the stations that they are doing something wrong, and it is hard to tell the stations what to do.

There is a booklet that has come out from Everglades, Fla., that tells you how to contact the different advertisers, if that is who you have to contact. There is also, within this book, it tells you the station names and addresses and the managers, the producers of the programs.

I happen to feel the thing that is more violent of all the kinds of things that are happening is not the actual violence programs, or sexual exploitation programs, but the loud, tremendous noise that is in these programs, more so than the violence. I think it is the noise that is causing the crime in our streets, in our schools and in our State and in our country, because of the fact that—and a good example would be where the "FBI" are programs that are taken from cases that are closed, and they are letting us know what happened in those cases.

Now, to think that the "FBI" is a violence-prone program, I think it is up to the person viewing that program, and I don't happen to feel it is violence-prone.

Mr. **Van Deerlin**. Thank you, Mr. Watts.

Our next witness, Susan Fedderman, from Pacific Oaks College, is described as an early childhood specialist.

STATEMENT OF MS. SUSAN FEDDERMAN, EARLY CHILDHOOD SPECIALIST, PACIFIC OAKS COLLEGE

Ms. **Fedderman**. That is right. I will clarify some of my qualifications.

I am trained in early childhood. I worked for a year and a half in London with Anna Freud.

I was at the Center for Research in Children's Television at Harvard, and, in fact, helped to establish it.

I studied visual thinking with Rudolph Arnheim.

For the past couple of years, I have been the early childhood consultant to a group called Action for Children's Television. You may have heard of it.

Mr. **Van Deerlin**. A–C–T?

Ms. **Fedderman**. A–C–T. OK. I am based here in Los Angeles and am trying to do some work here with the networks.

What I would like to do is give some of my feelings from trying to work with the industry and some of the kinds of things that I think might be helpful in thinking about effective intervention.

First of all, I would like to offer a little information from my understanding of the literature on violence, and that is: People were talking a lot about police stories, and that kind of thing, earlier.

Some of the things that seem to be consistent in the findings is that it is very important who is held in esteem and those acts that are rewarded, and not necessarily the incidents; although, I think anyone would agree that if you are patted over the head 10 million times, it is going to have a cumulative kind of effect, but that it is very important to look at what the hero does, or who is held in esteem and what acts get rewards.

So, that, it is not just important to say bad guys get in jail. Kids are no dopes, and they are not going to copy the guy that is looked down upon, or the one who is pushed over a cliff. They are going to imitate the hero. I mean, any one of us is going to imitate that person that we look up to.

I think if you look at the voluntary withdrawal, coselling the products to children on television—if you look at the voluntary withdrawal of vitamin ads being retracted in terms of selling to children, it is because of this very principle.

When we look at programs that depict—I think one of the worst ones comes out of a model of Los Angeles, where our own tactical police form—I mean, it is a sad statement on our society that we hire people to kill other people, but that we make a program out of it. When you think about that, what we have are the heroes who are hired killers, going out and those acts that get rewarded——

Mr. **Waxman**. Are you talking about the police shows?

Ms. **Fedderman**. Yes. The act that gets most rewarded is the killing kind, and so that, if you just say, "Well, police shows show law and order," you have to look at the kind of visual modeling the children do, and what they learn from television.

Kids learn from everything. They learn from what we want them to learn. They learn, also, from what we want them not to learn.

~~OK. I would like to address myself to two points in that regard.~~

That is, why don't we create a model for dealing with this? I don't think we, necessarily, always need to eliminate all violence, because children have to learn how to deal with situations. There are real life situations that are meaningful and touching. I would not like to deprive a child of the story of "The Red Pony." It is a very meaningful, gripping kind of story.

What I think we have to think of is the amount of violence that we put in front of children, and also, the model of strategy that we have the hero do.

One of the things that one could look at, if you are familiar with it, are Larry Colberg's(?) model of moral development strategies, and think about whether we could, in fact, have the hero operate on higher strategy, problem solving, more creative, more cooperating, helping kind of behaviors than you have the bad guys operating on. To have the hero operate on the same level of behavior doesn't really help a child very much. OK.

The other thing I would like to say is, there was some sort of comment about the difference between fantasy and reality as a very subjective kind of thing, in terms of children.

I think it is important to take some sort of model of behavior and say, "OK. This is how I am going to look at developing behavior."

I tend, in terms of looking at television, to take what is called a Piagettian model of behavior, and in that model of behavior, young children, I would say before the age of 5, or 6, or 7, believe what they see. The only reality, or the only thing they know, is what the evidence is before their very eyes. They cannot hold ideas separately to that in their heads. We call that the ability to conserve.

If you are familiar with the kind of experiments that have been done. This is a very simple, but a fairly graphic example, is that, if I line up in front of me two rows of, say, forks, OK, parallel to each other in matching, and I say a wind comes by and spreads one out, and I ask a young child, "Do I have the same number, or does one have more, or one have less?" the young child is going to answer what looks like more.

If I take that same row and push them together, and it looks like it has less, the young child will answer, "Well, this has less, and this has more." That is because they only can take in, at that moment, what they can see.

So, when you talk about television, to them, everything they see is real. As long as they see it, it is so, and why shouldn't it be so. So, for them not only to differentiate that television is not real, but that cartoons are different from live action—if it can be drawn, it is so. Don't they believe in Santa Claus, and all the other kinds of things?

When a child begins to be able to hold other ideas in his or her head, we say they can conceive, and they will be just as vehement about—if you use this example of a pitcher pouring water out, or any of the other kind of conservation kind of things, they will say nothing was added, and nothing was taken away. It has got to be the same.

Then the child knows that it is make-believe, and only then. That is when children begin to be able to read; when they can hold the idea of an "A"; that an "A" is an "A" is always an "A". They hold that in their heads. A 3-year-old cannot hold that in his head. OK?

The reason I say that is that I think it is terribly important, if you are talking about children, to have some kind of model of development that you are going to hold. I think it is important for you, as Congressmen, to do that. I think it is important for us, as consumers, to do that. I think it is very important for the networks to do that.

It would seem to me a plausible idea to ask the Department of Standards and Practices to make some sort of statement of how they see a developing human being.

From what I can see in the industry right now, the Department of Standards and Practices and the various networks are so scared and send down so many conflicting memos that it is really mind boggling. Since I read a lot of them, I am in some sympathy with the writers and the creators that have been sane. Some of them are crazy. That is because they have heard this—this idea of effect. They are all the regulatory agencies. I think it is important we have regulatory agencies, but we have to get some sort of consistent model, whether it be internal, within the industry, or external, in terms of a Federal regulatory agency, or in Congress, to say on what basis are you saying this act doesn't make sense.

In line with that, I think there are a couple of combinations that might be useful.

The gentlemen who were here earlier were talking about some sort of boards of advisors, or that kind of thing. I think one of the things is that the real place for intervention in television is on the early development level; that when something is made, which is basically all an adversary group can comment on; that is, once it gets on the screen, and they can count up the number of this, or they count up the number of that, once something is made, it is going to be run. It is going to be run on prime time. It is going to be rerun. It is going to put into syndication.

It seems to me, whether you, yourselves, can do anything about it in terms of a formal aspect, one would want to encourage more informal use of consultants who have been trained. That is not just an expert in the field, but someone who has also been trained in some understanding of the television industry and what is possible, and what is not possible, to work with writers on an early level.

That is not to say to take away their creativity in any manner whatsoever. I don't think a consultant can—they aren't writers, or they would be writers. I think we aren't asking writers to be less creative, but, in fact, to be more so. That is, to understand, if they write a joke in one way, or they do something, the impact it could have from a body of knowledge. That is not just swinging from the hip, where you talked about, well, one person can have one opinion, and one person can have another opinion.

There is a body of solid knowledge of human behavior, of research in television, in a lot of things, that a writer can use; if you don't think it can be an effective model, I think, very seriously, you should look at the children's television workshop model in the development of "Sesame Street" where you have this dialog going on between writers, researchers, specialists in different fields. OK.

I think that is something that really needs to be looked into in a very serious way. If you talk to writers in this town, a lot of them are backed up into the wall, because their very livelihood is at stake.

People from the networks and Standards and Practices, without understanding the body of regulations, or criticism, are saying, "We can't do that." I mean, people don't know if you can have a pie in the face, or can't have a pie in the face. They can't understand how they would find out.

At the same time, I think that it can't just be—it is not like you were talking about, "Well, should we go back to advertisers making the decision?" The issue is not that any one person should make the decision, but that you should have a broader base of input, and it could be done in several ways.

If you had a consumer model as the people from the church had suggested, they might be able to articulate it in a way that CTW sets out goals for the year, and then, comes up with a writer's handbook, which is in no way scripts, but, if this is your goal, these are some of the ways we are talking about in a visual sense.

Then, from this advisory group, or a whole selection of cross sections from all parts of the city or the country, you could have a resource that a consultant—say you are doing a show with blacks on it, I can't answer for blacks. I could answer for Jews, but I am not going to answer for blacks. I could answer for women, but I can't answer for men.

But, if you had a resource, a key consultant could bring in other people to respond to a script, to say whether something is legitimate, or offensive.

I think there are some really key models in that kind of way that could be brought out.

There is one other thing I would like to say. I would really like to take exception to your sort of putting parents out there as not caring about their children.

I work with parents and children every day, and I talk to about three groups a week in this area, Western United States, including Hawaii, on a regular kind of basis, and it seems to me that you can't make blanket statements about parents not caring. A lot of times, parent don't know what to do.

One of the things I think we could ask from the TV industry is that just as you have countercommercials, or that the real place for PSA, in terms of giving wide varieties of information in messages, I think it is very important that we begin asking the industry to use—since the industry gives Americans most of the information they know about the world, why shouldn't they also give them information that we know about, utilizing television, or values in television?

One thing I had wanted to mention about violence is that it seems to me that one of the major things in putting an inner inhibition to the violence that children see at an early age, and we know that they can clearly remember violence, or we can remember anything—I mean, I am sure that those of you, up there, who saw "Howdy Doody" could just think back and remember a lot of the characters; or, how many can remember—you know, how did you know it was the "Lone Ranger" at the end? What did he leave? What was the name of "Sky King's" plane?

I mean, we could go through, and you would start remembering a lot. You would remember things that if I asked you to recall, even though you hadn't thought of them for 20 years, a picture would come up in your mind. I am sure you know what Clarabelle looks like, and I am sure you know what Howdy Doody looks like. OK.

The important thing is: If we have the capacity—the human mind has the capacity to remember visual things over reading things and auditory things, and has the capacity to remember them for very long periods of time, and what is put in, whether it be put in in real life situations, or strategy is put in because you have seen it on television, what gives you the guidance to take out other things, and not take out certain things in your life?

I think one of the things that gives you that guidance is a clear set of values about the society that is transmitted to you by a caring figure, whether it be parents, whether it be someone you look up to, or the school, or whatever; and, it seems to me that we have to encourage people to verbalize what values they support and what values they don't support. This seems to be the critical factor in terms of children. It is a clear transmission of values to them.

That makes me feel comfortable. I love you. That is not unacceptable, as far as I am concerned, and that is the kind of thing that the television, itself, can transmit. That is, some viewing skills of how to use the television wisely.

The last thing I would like to say, because I know it is toward the end and I don't want to take up your time, is that I think that we have to look at that television—well, you don't want to regulate it all of the time.

There is some aspect to the fact that it has to be to free—to all of the people some of the time; however, someone mentioned, earlier today, the issue of life, liberty, and the pursuit of happiness. It seems to me you can either take that, when it was written, as that they are all equal. I don't take it that way. I think they are in successive order for a purpose, and the protection of life comes over the protection of liberty, and the protection of liberty comes over the right of the pursuit of happiness.

You are talking about growing children and families, and that you have to have some kind of limitation, or some kind of responsible broadcasting, or some type of sensibility. Whether that be done—I would hate to think that we have to do it all on a regulatory basis, because I may like what you regulate this time around, but I am just afraid I am not going to like it the next time around.

I believe there is a tension, however, that has to exist between the private sector and the public sector, but, it seems to me that, up until 9 o'clock, really, is the responsibility of the broadcaster, and after 9 o'clock, I would say, it is the responsibility of the parent, even though we can get wonderful statistics about how many children are up after 9 o'clock. I am well aware of that, but I think there has to be, again—we don't keep children in school all day and weekends because they aren't learning. You do the best job you can. You take a reasonable amount of hours and say, "I am going to be responsible to the child during these hours." We, as a government, do that to our children through the public school system.

By the same token, I don't think that you can say, "We are, therefore, going to regulate the airwaves 24 hours a day," or even say that they should be regulated; though, I do think we can say that we have to have responsible broadcasting up to 9 o'clock at night.

That is all I have to say.

Mr. VAN DEERLIN. Thank you, Ms. Fedderman. We are grateful to you for appearing.

Are there any further citizens who would like to be heard?

[No response.]

Mr. VAN DEERLIN. In that case, we will conclude these hearings at 5:25 p.m. on this day, Wednesday, August 18, 1976.

[The following statements, letters, telegram, and mailgrams were received for the record:]

STATEMENT OF PHILLIP BARDOS, MEMBER, LOS ANGELES SCHOOL BOARD

Since the inception of television, many individuals and organizations have expressed concern over the effects that certain types of programming might possibly have on the thinking and behavior of young viewers. The matter has been considered on repeated occasions by the Los Angeles City School Board of Education. Most recently, on May 24, 1976, members of the Educational Development Committee of the Board reviewed a recent report from the Rand Corporation, *Television and Human Behavior: The Key Studies*, which suggests that there is reason for considerable concern, especially on the part of parents and educators, and hopefully, including broadcasters and those who produce television programs. Included in the report were such findings as:

The National Commission on the Causes and Prevention of Violence concluded that "The weight of evidence from research is that violence in television entertainment stimulates aggressive behavior. The broadcasting industry should eliminate cartoons containing serious violence and reduce programming with violent episodes; undertake more effort to control the context in which violence is portrayed in television drama; and undertake more active and extensive research on the effects of television violence. Parents should supervise children's viewing, and express disapproval of programs to broadcasters." [1]

The Surgeon General's Scientific Advisory Council on Television and Social Behavior indicated that "there is a causal relationship between viewing violence on television and aggressiveness on the part of children although this may depend on various circumstances." [2]

A report by Murray, Rubinstein, and Comstock concluded that "Recently completed experiments are consistent with the prior scientific literature in demonstrating a causal relationship between the viewing by children of violence on television and subsequent aggressiveness." [3]

Statistics indicate that children spend more time viewing television than in any other activity except sleeping. By the time a child graduates from high school, he will have spent an average of 15,000 hours watching television compared to 11,000 hours in school. Action for Children's Television (ACT) has expressed concern about the increased number of incidents of violence portrayed on programs that young people regularly watch. Dr. George Gerbner of the Annenberg School of Communications, University of Pennsylvania reported, "It is . . . clear that children watching Saturday morning cartoons had the least chance of escaping violence or of avoiding the heaviest . . . saturation of violence on all television." [4]

As a result of the review of this report and the ensuing discussion, members of the Educational Development Committee, including Miss Diane Watson, Chairperson, Mrs. Kathleen Brown Rice, and Phillip Bardos, directed that the staff of the District's Instructional Planning Division—including representatives of the District's owned and operated UHF television station, Channel 58—develop an appropriate policy related to this significant problem. Subsequently, the following policy statement was adopted by the Board of Education on June 14, 1976:

"KLCS programming will not include material considered to be obscene, pornographic, vulgar, or excessively violent. However, some artistic, literary, historical, medical, and documentary programs known to contain language and graphics that might be considered objectionable by a few (but acceptable to the majority of viewers in the context of their presentation) will be screened by the station staff prior to broadcast. Works such as the plays of Shakespeare, biblical literature, works of art, and historical drama will be broadcast without editing. Programs considered adult in nature for reasons other than those enumerated in the first paragraph will be so identified visually and audibly prior to broadcast and will not be broadcast prior to 7:30 p.m."

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[1] George Comstock, *Television and Human Behavior: The Key Studies*, (Rand Corp.), Santa Monica, Calif., June, 1975.

[2] Ibid.

[3] Ibid.

[4] Evelyn Kaye, *The Family Guide to Children's Television*, (Rand Corp.), Santa Monica, Calif., June, 1975.

In adopting the policy, Board members directed staff to prepare appropriate correspondence to commercial stations and to producers of educational programs. Additionally, we have requested that this policy be reported to parents of students as an aid in guiding children's viewing.

Through this action, the Board of Education of a major School District has gone on record as supporting the development of programs for television which respect the sensibilities and protect the rights of young viewers. It is our united opinion that television has a dramatic impact on the minds and character of young children. And since it is readily accessible to most of them, there is great need for producers and broadcasters to be especially aware of both the content and scheduling of programs in such a way as to insure, insofar as possible, that most youngsters will be enabled to enjoy television's finest offerings without exposure to so-called "blue material" and/or violence.

That the Los Angeles Unified School District is committed to making use of television as a learning resource is evidenced by the fact that the District owns and operates an educational television station, KLCS-Channel 58. Research documents indicate that students learn efficiently from instructional television in all subject areas at all grade levels. Research also indicates that related meaningful interaction with adults will significantly increase the effectiveness of television for instruction. We, therefore, suggest to our teachers and parents that they become actively involved in the television viewing of students both at school and at home. Parents and teachers need to play a strong role in guiding the television viewing of students and in assisting them to become intelligent and discriminating viewers.

Through the provision of truly quality programming, representatives of the important and powerful television industry can contribute significantly to the development of programs which capitalize on the best aspects of family life and which recognize the importance of television viewing time as an aid to parents, not a substitute for parental guidance.

Speaking, then, for the seven members of the Board of Education of the Los Angeles Unified School District, we wish to commend those who have made this hearing possible, to encourage the congressional representatives and members of the television industry who may be present to lend their best efforts to the promotion and development of television programming which will strengthen individual and family values and which will contribute significantly to the education of children and young people in the schools. We applaud this effort and thank you for making it possible for us to present this testimony.

Statement of Anne Neamon, National Coordinator, TV Cleanup

CONSTITUTIONAL AND CRIMINAL VIOLATIONS

I. Federal Constitution

The *intent* of the Constitution compels the more perfect Union (not imperfect), justice/tranquility (not injustice and turbulence), blessings (not vices) of freedom.

The *First Amendment* compels government neutrality to religion, and forbids entanglement and boundary violations of government facilities and accommodations for purpose of committing hostilities to religion (*Engel* v. *Vitale*, and *Abington* v. *Schempp*).

(There are constant violations to six religious principles of the Ten Commandments, the historic basis for law and order.)

Note: "No government facility may be used to commit inhibition or hostility against (godly) religion," Justice Douglas; "We cannot overlook the fact that we are a religious (godly) people", Justice Goldberg. *Engel* v. *Vitale* and *Abington* v. *Schempp*. "Secularism, atheism, humanism, ungodly beliefs are unconstitutional" (when presented through facilities and accommodations of any government facility in service to the public—licensing, Air waves, public transportation, etc.).

Parents Rights.—While TV cleanup has been effected for the young children, 10 years and older remain unsecured from the amorality. There are no federal laws on "contributing to juvenile delinquency", a concern the Committee must undertake for *all* media, not just TV. All social problems have been identified as predominately committed by youth 12–18!

National Security.—"Congress shall maintain a well-regulated militia". This responsibility has been destroyed, with women filling quotas, 40% Academy dropouts, Academy dishonesty, and complaints from Services that youth quality is a burning concern!

II. State constitutions

All State Constitutions require Godly living. Virginia compels Christian Forebearance (Faith, Hope, Charity); constant adherence to virtues, principles, morality; and no *molesting of Christian conscience!* Morality is declared a necessity for survival of free government.

III. Criminal violations

Public living and family living within the *Godly* realm is guaranteed by the Establishment Clause of the First Amendment. Love of country and belief in God with official encouragement, National Survival only "when the God under whom we serve knows we are right"; "We cannot overlook the fact that we are a religious people," Justice Goldberg—repeatedly the Supreme Court has identified the nation as a Godly nation—One nation under God—stressing official encouragement of Love of Country and Belief in God. By such Declarations then, the Constitutional rights also become Civil Rights. When religious rights are violated through the government facilities and accommodations of TV licensing, airwaves, funds—and exploited to destroy the nation through destruction of Godly religion as evident on numerous TV programs—This is a criminal offense, under U.S. Criminal Code 18, Sec. 241–242, with mandatory fine and imprisonment.

TV amorality and subversion with threat to national security is obvious. National cries have been ignored. National statistics record growing youth and adult degeneration through TV amoral influence by *power* of *suggestion* and *thought control*. Principles, patriotism and morality are undebatable, protected by the Constitution and reassured by Supreme Court cases which never did deny such protection. Subversion and diabolical amorality to destroy the white religious race is not protected, but in criminal violations. Free press and free speech is permitted only within the confines of constitutional requirements of no hostility, inhibition to religion and no subversion. Parents rights must be secured at all costs for how goes the family so goes the Nation. Political, atheistic, amoral promotions in TV are therefore criminal offenses as well as violations of Federal and State Constitutions.

The conspiracy of TV is obvious. Program topics appear precisely at the same time with the same message in schools, movies, magazines, and all media. Conspiracy is very clear and persistent with intent to threaten national security.

DEMANDS FOR CORRECTION

I. In the interest of national security, political propaganda, subversive programing, the pitting of one race against another, degenerating the white, and enhancing the minority must be stopped. Equal opportunity must be limited only to worthy qualifications. Every honorable pursuit in service to the public, private or public is entitled to provide unhampered competent service to that public.

II. Congressional delegation of its obligation and authority to *regulate commerce* does not depend upon the Supreme Court, nor laws. The Constitution gives clear direction "*to regulate*", and that does not mean "*pass the buck*". Neglect and mismanagement by Congress has served the ungodly and subversive to perform through criminal offenses to the godly and patriotic.

III. Constant monitoring of holding all media, especially TV within the confines of the Constitution, free from conspiracies must be promptly effected and held.

IV. Competent personnel in key positions in all media, especially entertaining must be placed under revocable licenses compelling constitutional, honorable performance, with mandatory penalties.

V. Congress must honor its own laws. When Payola music is outlawed as in Russia because it promotes the uncivilized, uncouth, irresponsible, degenerate drug cult, and violations occur in defiance of that law—Congress must be held constitutionally and criminally responsible.

VI. At all times congressional "regulation" of TV, as with all commerce must be in the public and national interest—official encouragement of love of country and belief in God, as repeatedly declared by the Supreme Court cases on school prayers where the "winning of wars" is defined as dependent relation to "being right". Congress is obligated to honor the supreme law of the land—the Constitution—as defined by the Supreme Court.

"No government facility or accommodation may be used to commit inhibition or hostility against godly religion."

"It is not the function of government to support deviate behavior."

"We must all times recognize God's province over the lives of our people and over this great Nation."

ALL citizens on public payroll or not are obligated to participate in *all* phases of public living contributing to the common objective of *One Nation Under God.*

TV programing must be liberated and secured from diabolical human engineering.

(Note: Additional backup material is on file with the House Subcommittee on Communications.)

Statement of Sophie B. Altman, Executive Producer, "It's Academic," Altman Productions, Inc.

As a producer of a family-oriented program, I welcome the opportunity to support the family viewing hour concept. The television industry should be encouraged to consider the sensibilities of viewers who do not want their children to be exposed to violence on the guise of entertainment. The problem of violence as a form of entertainment will not disappear until the industry recognizes that millions of viewers are repelled by many of the programs offered to them. Certainly the studies documenting a relationship between aggressive behavior and television viewing and the increasing reluctance of advertisers to sponsor mayhem will eventually reduce, if not eradicate, the more violent programs.

I've worked closely with thousands of teenagers during the past fifteen years. They've been the "stars" of my program—a quiz show called "It's Academic." I know how a construstive program can change lives and be an instrument for growth and fulfillment. It is my firm belief that television has compounded the damage it has done to teenagers by failing to provide enough programs specifically geared to and *involving* teenagers. One reason for this oversight, in my opinion, is the lack of FCC guidelines for children over the age of 12. There is now an abundance of good programming for young children, but virtually nothing substantive for children of junior and senior high school age. Surely, if these youngsters are the ones most involved in wrongdoing, they should be the ones to receive the most attention and aid from the broadcast medium to which they give so much time. For it *is* children who are most affected by brutality on television, and it is our teenagers who are acting out the crimes they see committed. Programmers are going to have to face the fact that they may be responsible for a percentage of criminal acts.

I am not proposing that television become an enormous classroom. I am urging that the industry be aware of its effects for good and ill and its neglect of our teenage population.

"It's Academic" has brought about changes in the curricula of several junior and senior high schools in Washington, D.C. If one local program can upgrade scholastic achievement, think what television could do to help teenagers cope with life. We have evidence, from several in-depth surveys we've taken in the past few years, affirming that if young people see themselves working and learning on television they are motivated to reach for more productive goals in their own lives.

In a period in our history when vast numbers of college-bound students can barely read and write I think it's time, whether through legislation or self-regulation, for television to assume more social responsibility.

Statement of Chill Wills, Los Angeles, Calif.

I am here today outside the Federal Building, where the congressional hearings on Sex and Violence on Television are being held, simply because I was not allowed to speak my piece inside.

As a veteran in the entertainment industry, I asked for a chance to offer testimony in favor of wholesome TV programing before the Subcommittee on Sex and Violence on Television, but I was thumbed down, along with a number of other performers, as well as school, community and law enforcement agency leaders.

Maybe somebody can tell me why the testimony of people from the Gay Media Task Force and the Adult Film Association is considered more pertinent to American family life than testimony from the school board. The subcommittee apparently thinks it is.

For many years the motion picture industry provided entertainment for the entire family, but now it is geared for the adult audience, with the exception of Disney films and a few other productions. The movies have disowned the kids. The Saturday afternoon matinees are all but gone forever.

That leaves television as the main entertainment medium for the family, and if TV producers are not turning out enough family-type product, what's left? The answer may seem far-fetched, but parents, if deprived of television's restrictions on undue violence and suggestive material, may have to just turn off the set.

I cannot understand why the producers are objecting to a mere two evening hours of restricting their product to strictly family entertainment, which is little enough considering all the other hours for adult programming.

For years television turned out wholesome shows like "I Love Lucy," which were top-rated and the re-runs earned money for long periods. Now why are the producers insisting—in the name of free speech—that they aim their product at the adult viewers at the expense of the family?

What it amounts to is that television is chipping away at the cornerstone of American life—the family.

STATEMENT OF KATHY BARBER HERSH

IS TELEVISION PREEMPTING THE CREATIVE PROCESS?—SOME QUESTIONS ABOUT CHILDREN AND THE TELEVISION HABIT

Each year 10,000 Americans are killed by handguns. Possessing a handgun seems the answer to every problem—security, frustration, impotence, poverty and fear. Kojak carries a gun, Banacek does, Cannon does. And they're the good guys. The guy with the upper hand always seems to have a gun in it. Or at least that's the way it seems—on television.

After watching our daily 3.8 hours of television,[1] as we lay down our saturated heads on our pillows (with pistol underneath?), we have had the hindsight to ask how television violence is affecting our children.

But there remains a larger, much more insidious question. What are the long-term effects of television watching (violent and non-violent) on our children's personalities? Are they becoming passive creatures with a pent-up storehouse of unexercised fantasy and frustration? Have they become stimulus addicts, requiring a steady flow of input into systems intolerant of delays or distractions?

Two prominent psychologists (Friedman and Eriksson, 1968) who have considered the question agree that the problems of program content are "insignificant compared with the harm just watching television does to children. It keeps them on a regressed level or orality, isolates them from living human beings, and forces them into passivity at a time when physical, emotional and mental activity is even more important than later in life. . . . Feeding ready-made fantasies and ideas to growing children is like bottle-feeding them with infants' formulas. They watch activity instead of being active. They experience violent fantasies, not only because of the content of the programs but because of the passivity enforced on them by television viewing in itself. Only by their own activity can they learn to do creative things with their aggressive energy instead of accumulating it as a destructive and self-destructive force."[2]

If, according to Carnegie Corporation statistics, pre-school children watch fifty hours of television per week, when do they have time for activity?

A second generation of TV children are growing up with an electronic nurse, teacher, preacher, and counselor, an intimate companion who day after day espouses the same solutions to the same problems, from crime-ridden streets to dirty floors, in an unimaginative vocabulary so over-used that Webster's may become archaic.[3]

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[1] National adult average according to recent Nielsen surveys.

[2] Friedman, Lawrence J., and Paul S. Erikkson, *Psychoanalysis: Uses and Abuses,* 1968.

Is the television habit making more and more inroads on children's valuable time, time for exploring the environment, however limited, and time for playing and creating?

"Creativity" is difficult to define. It is not merely something in which artists indulge. It is a vital element in every stage of any problem-solving operation and thus its nurturing is mandatory for survival.

J. P. Guilford, a pioneer in the field of creativity research, says: "In a world grown small so far as travel and communication are concerned and a world in which the exploding population competes ever more strongly for its resources, adjustments in the political and personal-relations areas call increasingly for imaginative solutions. From any aspect from which we may view the scene, the needs for creativity are enormous." [4]

Dr. E. Paul Torrance, noted educational psychologist renowned for his work in the creativity field, raises some thought-provoking questions: [5]

"It takes little imagination to recognize that the future of our civilization—our very survival—depends upon the quality of the creative imagination of our next generation. . . .

"Instead of trying to cram a lot of facts into the minds of children and make them scientific encyclopedias, we must ask what kind of children they are becoming. What kind of thinking do they do? How resourceful are they? Are they becoming more responsible? Are they learning to give thoughtful explanations of the things they do and see? Do they believe their own ideas to be of value? Can they share ideas and opinions with others? Do they relate similar experiences together in order to draw conclusions? *Do they do some thinking for themselves?*" (Emphasis mine.)

Creativity has been defined as "a process of individual experience which enhances the self. . . an expression of one's uniqueness." [6] It is associated with the production of original ideas, the ability to recognize and isolate problems, and fluent free association. Guilford (1959) found that creative persons have a strong tendency to be "divergent" rather than "convergent" thinkers—i.e., they come up with a variety of solutions to a given problem rather than picking one "right" solution and pursuing it to its logical end. We now know that creativity and intelligence are very different characteristics which do not necessarily correlate (Torrence, 1960). It is easier to define what creative people do than the actual process involved.

Dr. Torrance believes that creativity is like any function of the brain, it is a muscle that needs regular exercise in order to be productive. Children normally exercise their imaginations in free-play situations and learn to integrate their fantasies into the real world. But what happens when the television habit intrudes into that time? And what concept of reality is television giving our children?

As a member of the first TV generation, I often wonder what effect television has had upon the development and expression of my creative instinct. Would I have become more acquainted with my creative self if I had not been diverted in my creative "primetime" by a daily diet of the doldrum?

The theories of Piaget have long been a standard guide to developmental psychologists. According to Piaget, the newborn child has no specific knowledge, only a tendency to organize the sensory input he or she receives. As a result, the mind organizes classifications and concepts into which new information is placed. Dealing with information involves two basic mental processes: assimilation and accommodation.

Assimilation is the process whereby incoming information is perceived and interpreted in terms or existing categories, a kind of pigeon-holding, Accommodation, on the other hand, involves a restructuring of the mental organization to absorb new information that is inconsistent with the previous information. In other words, inventing new pigeon-holes.

According to Piaget, the young child, until he acquires the mental faculty, indiscriminately puts together the real and the subjective world. Imagine the mind of the pre-school child watching 50 hours of television a week, often, the only real person in the room. What does he or she absorb in any given week—cartoons, re-runs of re-runs of situation comedies, game shows, soap operas, more cartoons, perhaps a glimpse of a mid-day news program, and hundreds of commercials. That is a lot of input to deal with. How does the child handle it all? And how does he or she absorb and accommodate for the inconsistencies?

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[3] Indeed, the average verbal score on the national Scholastic Aptitude Tests has been steadily decreasing since 1957, when it was 473 on a scale from 200 to 800. In 1973 the average was 440, down 33 points. (Time, Aug. 25, 1975, "Can't Anyone Here Speak English?")

[4] J. P. Guilford, "Traits of Creativity," in H. H. Anderson (ed.) *Creativity and Its Cultivation*, Harper, 1959.

[5] Torrance, E. P., *Guiding Creative Talent*, Prentice-Hall, 1962.

[6] Dr. Michael Andrews, Double Professor of Art and Education, Syracuse University.

Perhaps there are no inconsistencies at all, and thus the whole mental activity involves only the bland assimilation of ad jargon, cop-speak, cartoon talk and game show terminology.

The importance of play in the growth of a child has been stressed by countless psychologists. Not only is play a release of energy, it is an important learning process. Children learn to interact socially with their peers, they learn to share, to modify antisocial impulses, and to explore roles and personalities.

Even as adults we recognize the need for recreation. "All work and no play, makes Jack a dull boy," is one of the most often-repeated admonitions in the English language. Daydreams and nocturnal dreams are a kind of adult substitution for child's play, in which adults either escape from reality altogether or rehearse their judgement and reactions in situations which often border on the real-life situations and problems with which society demands they cope.

Has the television generation been brought up to believe that problems can be easily solved? Carnegie Corporation President Allen Pifer is concerned that reality as presented on television and its problems are treated so perfunctorily that children may be getting inaccurate perceptions of problem solving:

"Every day and night for most of their lives, your children and mine have watched the major problems of the universe resolved in 30 or 60 minutes. . . . In real life, problems are solved and go away very slowly. Are our children having trouble separating the immediacy of television from the reality of life?"

The Inquirer conducted an interview study with six to eight-year-olds, asking them what they thought America would be like 100 years from now.[7] One child replied: "Well, there'll probably be these machines that you can 'zonk' their buttons and then Pow! You're invisible! And if you 'zonk' another button, you can go anywhere you want." As simple as switching television channels.

Another child said: "Oh, we'll have cars that fly in the air and we'll have lots of buttons. You just push a button and a robot maid will come out of the wall and bring you a cookie." The innocent imagination at work or the subtle influences of the conditioning of television viewing—the demand for immediate gratification controlled by a button? This may be overstating the case, but can we be sure?

Marshall McLuhan, media sociologist, says that "the introspective life of long, long thoughts and distant goals . . . cannot co-exist with the mosaic form of the TV image that commands immediate participation in depth and admits of no delays." [8]

Professor John Arnold (Stanford, 1962) observes "perceptual barriers" to creativity. One barrier is isolating a problem from its natural context. Another is narrowing the scope of the problem too much. A third barrier is the failure to use all the senses in gathering data. Although he was thinking of higher-level intellectual activity, these barriers seem strikingly applicable to chronic television overviewing.

Whether it's Lucy desperating trying to conceal from Ricky her expensive new hat, or Kojak with a new murder to solve, it all happens in two dimensions in the comfort of the living room and is resolved 30 or 60 minutes later, between commercials. The viewer needn't respond except to switch channels. And television network executives know how reluctant viewers are to switch channels once they've settled down for the evening in the easy chair.

It is tempting to hope that by sending children to school we are providing them with the opportunity to develop their creative potential, but the educational system, unless exceptional, is hardly geared towards developing originality amongst its pupils. In order to be efficient the educational system must program its pupils towards established goals and must discipline those who refuse to conform, often the "creative" pupils (Getzels and Jackson, 1958).

In Britain there is a very successful children's program called "Why don't you turn off your television set and do something more interesting instead?", abbreviated to "Why don't you?" The show revolves around a group of children sharing their ideas, discoveries, inventions and hobbies. The show is an example of the concern felt by Head of BBC Children's Television, Monica Sims, a woman who made newspaper headlines by her adamant refusal to program Sesame Street to British children. Aside from obvious language dissimilarities, she objected to Sesame Street's slick, commercial format, believing it was not conducive to increasing the child's attention span. Her opinion is debatable, but it is indicative of her concern for the child audience. In Britain children watch about 750 hours of television per year, or just over two hours per day.[9]

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[7] As quoted in "Gifted Children Study the Future," a paper prepared for the World Conference on Gifted Children, London, Sept. 8–12, 1975.

[8] McLuhan, Marshall, *Understanding Media*, p. 283.

British children are fortunate in the variety and quality of programs available for all age levels—fantasy, adventure, drama, natural history musicals and series adapted from children's classics like The Secret Garden, Pollyana, and Robin Hood.

One of the most popular shows is Blue Peter (BBC), with three co-hosts who appeal as real people with whom the children can identify. The content of the show is constructed to arouse children's interest, not pacify them. They take the audience with them on trips all over the world, creating an awareness of the variety of life in other places. They encourage children to send in interesting tidbits and involve them in campaigns and Blue Peter sponsored events to raise money for overseas relief. Personal involvement is encouraged—the hosts keep fairly constant eye contact with the camera and therefore with the millions of children throughout Britain who watch the program.

Vision On, a visually oriented, highly imaginative program originally designed for deaf children, also encourages participation at home by stimulating activities like magic tricks, constructions, puzzles and movement.

It can be argued that television provides stimulation and insight to many children whose stimulus-poor environments are enriched by their contact with the characters and language of television. And television can be an extremely effective tool in teaching verbal skills. Such is the carefully evaluated success of Sesame Street and The Electric Company. Mister Rogers and Captain Kangaroo do provide for many children warm, secure relationships with sympathetic adults. But, sadly, these shows are exceptional.

Meanwhile, what happens to the child if fantasy is phased out of his or her life? What happens when all the rag dolls are replaced by baby robots that walk, talk, eat and require diaper changes? Or busty Barbies with their thousand dollar wardrobes? What happens when the television habit has pre-empted the bedtime story? Perhaps this point will never be reached in homes where the parents are more enlightened as to the needs of children. But what of the other homes where parents themselves watch three to four hours of television nightly?

What becomes of the child who has never had to climb for the cookie jar, who has never had to use imagination or daring to get what he or she wants, whose gratification has been instantaneous, a reward without effort?

In the long-run, will television pre-empt the creative process? Will the only creators left be those who make television programs?

What would children be doing if they weren't watching television? They might not be painting child masterpieces of art, writing novels, or speculating on the solution of the world's future problems, but they most likely would be *doing* something, using their muscles and certainly their imaginations. It's not only healthy, it's what we need now and will need even more in the future—a generation with imagination.

CITY COUNCIL OF THE
CITY OF LOS ANGELES,
Los Angeles, Calif., July 15, 1976.

Hon. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that Congressional subcommittee hearings on family television viewing will be conducted in Los Angeles during the month of August. I regret that I shall not be able to attend these hearings personally.

However, I want to convey to the members of the committee my strong feelings that the "Family Viewing" concept should be continued to protect our children, as much as possible, from the harmful effects of violence and sex on television during the early evening hours.

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[9] Time Out, London, Nov. 7–13, 1975.

I certainly hope the committee will give very serious thought to the future of our youngsters when considering this most important question.

Yours very truly,

John S. Gibson, Jr.,
President.

Beverly Hills, Calif.,
July 15, 1976.

Hon. Henry Waxman,
House of Representatives,
Washington, D.C.

Dear Mr. Waxman: I understand that you are conducting hearings relative to family viewing time on television and since I have spent the last 40 years in television I would like to add my opinion to those you are reviewing.

I do not believe that "Family Viewing Time" is the total answer to the problem of violence and other damaging material being exposed to the young children watching at that time, but I believe it is an effort that is commendable and should be given a fair chance since something has to be done. Unfortunately, parental supervision, which should be the logical answer, is not effective. I also realize that youngsters go on listening and watching after 9 o'clock and therefore there is no "Chinese wall" that keeps objectionable material on one side of the 9 o'clock hour. However, I feel that the growing body of evidence that violent television shows are having, at the very least, a callous effect on the sensibilities of young people, requires us to continue this effort, at least until more research is available.

Very sincerely,

Art Linkletter.

Sah Enterprises, Inc.,
Century City, Calif., July 20, 1976.

Representative Lionel Van Deerlin,
Chairman, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

Dear Congressman Van Deerlin: I recently learned of the Public Hearings to be held in Los Angeles on the question of television standards and would like to make known my views to both you and the public.

While I most emphatically oppose censorship in any form, I just as strongly believe that we must eliminate excessive sex, violence, and noise from programs that have a large children's audience—and that it is the Industry's responsibility to accomplish this goal.

The family viewing concept has proven that programs can provide good entertainment without sacrificing the excitement and even romance (not just sex) which hold the interest of children and adults. It has not, as many who oppose it claim, stifled creativity or free expression.

Perhaps it has made some producers, writers, actors or actresses think a little harder about the effect of their performance on the audience—but is that something we should fear? That's not censorship, but a sense of responsibility that, I believe, should be encouraged and supported wherever possible.

In my own live and television appearances, I am conscious always of the makeup of my audience and I try to perform accordingly. That is not even self-censorship—in my opinion it's a mark of professionalism and an ability I cherish. Conversely, there are performers who insist that they are for "adults only"—and there's nothing wrong with that, either—for they still are performing for their audience, not being censored.

There is no show business rule that says to be successful, a program must be violent, sexy, noisy, rudicule the attitudes of some segments of its audience or play upon the misfortune of others for the "entertainment" of some.

There is much evidence, however, that programs are successful if they offer the audience an opportunity to enjoy itself, perhaps even learn something, and accomplish it all within the bounds of decency and good taste.

I can't help but wonder how much of this noisy opposition is motivated by a committment to artistic ethics, and how much of it comes from a question of profits. The small segment of our business protesting adherence to the family viewing concept appears to have the most to lose if such standards are really maintained in the future.

For myself, I believe that providing family entertainment is not a dollars and cents question, and I for one do not find it in conflict with my own artistic integrity. It is a part, however, of the larger question of this nation's morality and integrity. Any weakening of that fabric adversely affects the whole—and I am vigorously opposed to further damaging that already endangered structure.

Sincerely yours,

BILL COSBY.

THE EPISCOPAL CHUCRH IN
THE DIOCESE OF LOS ANGELES,
Los Angeles, Calif., July 21, 1976.

Hon. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I have learned that you will have a hearing on the family viewing concept of television in Los Angeles on August 17–18.

I sincerely hope and trust that this viewing time for families between 7 and 9 p.m. can be maintained. The increase in violence in our society comes from many sources, and I would hope and pray that the media would continue to join with other community standard bearers in maintaining high moral values in the entertainment of our young people.

Thank you for working for the maintenance of the family viewing concept.

Faithfully yours,

ROBERT C. RUSACK,
Bishop of Los Angeles.

LOS ANGELES CITY COUNCIL,
Los Angeles, Calif., July 22, 1976.

Hon. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As a Legislator in the City of Los Angeles, I have witnessed the growing crime rate within our cities as well as a deterioration in the faith of our young people which can be directly correlated to violence as it is portrayed in movies and in television.

I feel strongly as a parent that the television "family viewing" times should be continued as a method of deterring much of the cynicism that result in negative action by our youths.

I hope your subcommittee will be supportive of continuing the "family viewing" concept at least for a period that would provide all of us with a more realistic way to determine its effectiveness. If you have any further questions, please feel free to contact me.

Sincerely,

DONALD D. LORENZEN,
Councilman, Third District.

POLISH AMERICAN CONGRESS,
ILLINOIS DIVISION,
Chicago, Ill., August 17, 1976.

Mr. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communication,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am submitting this letter as a statement in lieu of oral testimony to the Subcommittee on Communications.

The television networks have been defaming the Polish Americans for the last ten years. In many programs that are given national coverage such as *All in the Family* and numerous talk shows and situation comedies, the Polish Americans have been the butt of these slurs and as a result the stereotype has been created of all Polish Americans as being stupid, ignorant, dumb, and unsanitary.

Fifteen million Polish Americans in the United States are demanding that television cease negative stereotyping of them immediately. The psychological trauma of the children of Polish heritage is truly tragic. Many of these children are shunned on the playground with statements such as "you can't play with us, you are just a dumb Polack."

I am enclosing, in a separate envelope, the study of Archie Bunker's bigotry by Neil Vidmar and Milton Rokeach. This article shows that *All in the Family* may reinforce rather than reduce racial and ethnic prejudice. This article can serve as the basic reasoning that will condemn all Polish-American negative stereotyping. Unfortunately this is the only article I have.

Sincerely,

Thaddeus L. Kowalski,
President.

[Telegram]

Los Angeles, Calif.,
August 4, 1976.

Hon. Lionel Van Deerlin,
Chairman, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.:

Regretfully, I will not be in the city August 17 and 18, so I cannot make an appearance at your congressional hearings on sex and violence on television to be held in Los Angeles at the Federal building. But please allow me to go on record as a firm supporter of the viewing time tetween 7 and 9 p.m. which is limited to good, high-quality entertainment for the entire family. I have small children myself, and it is reassuring to me that I can sit down with them and watch programs during that time period without having to worry about undue violence and sexual innuendo on the tube.

Sincerely,

Beverly Garland.

[Mailgram]

Care Symbol Production Inc.,
Los Angeles, Calif., August 4, 1976.

Hon. Lionel Van Deerlin
Chairman, Subcommittee on Communication, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

I respectfully request an opportunity to testify at the subcommittee hearing on sex and violence on television to be conducted by Representative Henry Waxman in Los Angeles on August 17. As a parent and concerned citizen, I believe there should be a time period in the early evening when parents and children can watch television together, as we like to do with our 8 year old son, with suitable programs avaiable.

I believe strongly in freedom of speech and expression, individually and in all mass media, in the production of all kinds of movies and books, in the broadest latitude for creative effort, but television is unique because it is in the home, available for viewing at anytime, and, for millions of families, it is a habit to watch together. Family entertainment doesn't have to be junk, it doesn't have to be stodgy or dull. Show "I Love Lucy", "Mary Tyler Moore Show", most segments of "All In The Family", can be viewed with delight by both adults and children. I think that strong dramatic shows, like "Columbo", possible too, depending on subject matter and treatment, after all, children watch and hear and read the news, which is filled with drama and frequently with violence and sex.

Children learn one way or the other, that its all a part of life, but it's better that they learn this gradually, instead of being engulfed by it in their most impressionable years.

Inasmuch as there is no practical way to enforce a television rating system, such as we have in the motion picture business, shows with a strictly adult format should be broadcast only in the hours after 9 pm, when most young children are in bed, I think that after 9, restrictions on content and treatment should be lessened.

The most important argument, I believe, for having a "Family Hour" is that children are influenced very easily and powerfully by what they see on television, The inherent cruelty of "Our Gang Comedy", "Laurel and Hardy", etc., is immediately used by the young child on his peers—or the family pet, children are intrigued and stimulated by violence on television, it's exciting; something to be acted out in their games, they emulate what they see, and sometimes sadly, they become what they see.

The young child enjoys watching violence although it is destructive and dangerous to his personality. (He also loves candy, and pastry and solft drinks even though they rot his teeth and harm his system). The child is not capable of choosing wisely between what is good for him and what is bad and traumatic for him. The parent must take that responsibility, with love and wisdom, but the television industry must help, not make the job impossible.

From what I have heard, it appears that very few motion picture personalities have been invited to speak in favor of the "Family Hour". I hope, therefore, that I will be given that courtesy, so that this viewpoint will be properly presented.

Sincerely,

CORNEL WILDE.

[Mailgram]

JERRY LEWIS FILMS,
Los Angeles, Calif., August 5, 1976.

Representative LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

I am unable to be present at the hearing your committee is planning at the Federal Building in Los Angeles this month, but I would like to make a short statement expressing my views on undue violence and sex on television.

I happen to believe in the future of America, and that future is based on our young people. Therefore, as a parent and as an entertainment producer, I accept my responsibility in shielding young and impressionable minds from the detrimental influence of violence and sex-oriented programming.

I have been associated with the industry—and with kids—for so long that I am convinced there should be a family viewing period to perpetuate wholesome entertainment for youngsters on television.

JERRY LEWIS.

[Whereupon, at 5:25 p.m., the hearing was adjourned.]

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